PROPOSED REVISION TO OMB CIRCULAR A–76

HEARING

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

OF THE

COMMITTEE ON VETERANS' AFFAIRS HOUSE OF REPRESENTATIVES

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PROPOSED REVISION TO OMB CIRCULAR A-76

TUESDAY, APRIL 27, 1982

HOUSE OF REPRESENTATIVES,
COMMITTEE ON VETERANS' AFFAIRS,
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS,
Washington, D.C.

The subcommittee met, pursuant to notice, at 8:35 a.m., in room 334, Cannon House Office Building, Hon. G. V. (Sonny) Montgomery (chairman of the subcommittee) presiding.

Present: Representatives Montgomery, Hall, Mica, Leath, Won Pat, Hillis, and Sawyer.

OPENING STATEMENT OF CHAIRMAN MONTGOMERY

Mr. MONTGOMERY. Good morning. The subcommittee will come to order.

I would like to ask unanimous consent that my full statement be put in the record.[1] Without objection, I would like to read a short statement.

Our purpose today is to continue oversight hearings on the Veterans Administration implementation of the Office of Management and Budget Circular A-76, which we are all very familiar with.

As you know, previous hearings on OMB Circular A-76 resulted in the enactment of Public Law 97-66, which contains language forbidding the use of funds appropriated for VA medical care accounts to conduct cost-comparison studies required by the circular. Since the enactment of Public Law 97-66, the VA has suspended cost-comparison studies in the Department of Medicine and Surgery.

We are concerned today with OMB's proposal to change the circular to make contracting out much simpler and to disregard costs. It is my understanding that OMB has formed a task force composed of representatives of the various departments and agencies of the executive branch to draft revisions to both the basic A-76 Circular, as well as its cost comparison handbook. The committee reviewed a draft copy of the proposed revisions and is very concerned that the draft includes several proposals which appear to be designed to circumvent the intent of law as prescribed in Public Law 97-66, section 601(b)(5).

I regret that the OMB has decided not to have Mr. Sowle, the Administrator of the Office of Federal Procurement Policy, appear before us today so that we could hear his explanation of the proposed draft. As a consequence, we will have to consider whatever

[1] The prepared statement of Chairman Montgomery appears on p. 33.

remedies are needed to correct this situation without the advice of counsel of OMB.

Mr. Hillis, who is the ranking minority member of this committee, will be recognized for any comments that he might like to make when he arrives.

Due to the number of witnesses that we have this morning, I request that the witnesses limit their oral testimony to no more than 10 minutes. All the prepared statements will, of course, be made a part of the hearing record.

I would like to thank Mr. Sawyer on the minority side for being here right on time, and also Mr. Leath on the majority side for being here, so that we could start this meeting pretty well on time.

Our first witness is Mr. Clyde Cook, Assistant Deputy Administrator for Procurement and Supply of the Veterans' Administration. Mr. Cook, if you would come forward.

I understand that you do not have a prepared statement. Would you tell us why you don't have one?

STATEMENT OF CLYDE C. COOK, ASSISTANT DEPUTY ADMINISTRATOR FOR PROCUREMENT AND SUPPLY, VETERANS' ADMINISTRATION, ACCOMPANIED BY MARJORIE R. QUANDT, ASSISTANT CHIEF MEDICAL DIRECTOR FOR ADMINISTRATION, DEPARTMENT OF MEDICINE AND SURGERY, AND MICHAEL SLACHTA, ACTING DEPUTY ASSISTANT INSPECTOR GENERAL FOR REGIONAL AUDITS

Mr. COOK. Yes, Mr. Chairman. Since the proposed options and revisions to A-76 have not yet been finally adopted or, we are told, reviewed at the higher levels of OMB, it was felt inappropriate that we take a position on something that may not come to pass.

Mr. MONTGOMERY. Mr. Sawyer, do you have any questions? I have a number of questions I wanted to ask. Mr. Leath, any questions?

Mr. LEATH. Not at this point, Mr. Chairman.

Mr. MONTGOMERY. All right. Let me start then.

Did you participate as a member of the OMB task force which sought to revise both the basic A-76 circular and the cost-comparison handbook? Did you participate in this forum?

Mr. COOK. Mr. Chairman, I did not personally. A member of my staff did.

Mr. MONTGOMERY. Who was that? Would you give us that for the record?

Mr. COOK. His name is Mr. Christopher Figg.

Mr. MONTGOMERY. Is he here today?

Mr. COOK. Yes, sir, he is.

Mr. MONTGOMERY. You might introduce the other two witnesses who are with you.

Mr. COOK. This is Mr. Mike Slachta from the Office of Inspector General, and Miss Marjorie Quandt, Assistant Chief Medical Director for Administration, Department of Medicine and Surgery.

Mr. MONTGOMERY. Well, we may want to call on this gentleman, but maybe you can answer these questions, Mr. Cook.

Would you please explain the various thresholds below which in-house activities would be converted to contracting out without a cost comparison in the draft proposal revision to Circular A-76?

Mr. COOK. Any function that involves 9 or less people, would be, under the proposed revision, would be automatically contracted out. Any function with 25 or less people would be contracted out, unless there was a compelling reason to do otherwise.

Mr. MONTGOMERY. Maybe you might orient the committee. What contracting out can an administrator of a hospital do right now under the provisions that he or she now has?

Mr. COOK. His general authority to do so, sir?

Mr. MONTGOMERY. Right.

Mr. COOK. He can contract for those functions that either are not of a continuing nature, intermittent staffing, he can contract for those functions for which he is unable to obtain qualified employees—this is generally in the medical field—and he can contract for those services he needs where he does not have the staff to provide.

Mr. MONTGOMERY. Such as radiologists and services such as that?

Mr. COOK. Yes, sir, radiology, pathology, and anesthesiology are frequently contracted out because of the inability to obtain qualified people.

Mr. MONTGOMERY. What are some of the things apart from the skilled medical services, that an administrator contracts out now?

Mr. COOK. In a large number of cases they contract such things as ambulance service, rather than providing the ambulance service with Federal employees and Federal vehicles; for grounds maintenance; for some building maintenance. Those are generally the kinds of things which he contracts out.

Mr. MONTGOMERY. Again, tell us from the draft proposal what would be the revisions.

Mr. COOK. Under the draft proposal, if it is adopted as submitted, if there were less than 10 employees engaged in the commercial-industrial-type activity, it would automatically be contracted for rather than provided with a Government work force.

Mr. MONTGOMERY. Well, security for a small facility, if it was less than 10, under this new draft proposal that would automatically be contracted out; is that correct?

Mr. COOK. Under the revised criteria, it would automatically be contracted out unless the administrator determined that security was the kind of function that he could not contract out for. Since there are special provisions in title 38 on the providing of police in the VA, it is my personal opinion that that one function could not be contracted out, but not because of the failure to meet the threshold.

Mr. MONTGOMERY. Like drivers of government vehicles, that would be——

Mr. COOK. Yes, sir, it would be.

Mr. MONTGOMERY. This would be a drastic change, wouldn't it, then? How many skills do we have in 10 or under?

Mr. COOK. The number of people in the 25 employees and under category is about 7,500. It is approximately 35, Mr. Chairman.

Mr. MONTGOMERY. How many?

Mr. COOK. Approximately 35 different functions.

Mr. MONTGOMERY. Thirty-five different functions and 7,500——

Mr. COOK. Involving 7,160 people.

Mr. MONTGOMERY. You mentioned something about 25?

Mr. COOK. Between 10 and 25, the approach is approximately the same, except that——

Mr. MONTGOMERY. Could you give us a list of those area functions?

Mr. COOK. Yes, sir. These are the ones under 25.

[The information follows:]

LIST OF VA COMMERCIAL ACTIVITIES WITH LESS THAN 26 FTE

Activity title	Number of VAMC's reporting function	Total FTE
ADP analysis (feasibility, consultations, systems analysis, design development, and so forth	21	21
Keypunching	143	319
Programming (software)	11	14
Data entry (other than keypunching	10	14
Installation and maintenance of ADP	12	23
Automatic transport system maintenance	11	15
Elevator inspections and repair	32	29
HVAC filter replacement	90	85
Duct and fin tube cleaning	30	32
Maintenance of grounds	142	603
Replacement or construction of new roads, sidewalks, curbs, and so forth	20	26
Snow removal	78	122
Exterior painting and waterproofing	53	92
Masonry/structural repair	8	179
Roof inspection and repair	41	28
Design services, A/E and drafting	105	259
Inspection and testing of firefighting equipment	79	80
Firefighting	31	344
Electronics and communications equipment repair	82	133
Food service equipment repair	121	149
Medical and dental equipment repair	139	532
Laundry equipment repair	75	89
Furniture repair	48	52
Pest control	65	60
Laundry and drycleaning	78	1,138
Carpet cleaning	67	106
Window washing	35	42
Interior design	54	43
Word processing (transcription pools)	118	758
Motor vehicle operation	115	574
Water and sewage treatment	26	48
Boiler plant inspection	10	7
Steam generation	131	806
Refuse collection and disposal	133	129
Chilled water production	65	209
Total		7,160

Mr. LEATH. Mr. Chairman, would you yield?

Mr. MONTGOMERY. I would be glad to yield.

Mr. LEATH. I would like to know what is magic about the No. 10. I mean, what brilliant deduction or stroke of genius came up with something that says anything under 10 can be contracted out?

Mr. COOK. I can't answer definitively, sir, but I think it was arbitrary.

Mr. LEATH. I think the whole thing is arbitrary, we agree to that.

Why didn't OMB come over here, Mr. Chairman?

Mr. MONTGOMERY. Well, I don't know. They just didn't want to testify on this.

Mr. LEATH. I would sort of think it wouldn't make much difference whether they wanted to testify or not. I think when a Congressional oversight committee calls them to testify, that they ought to be here.

What recourse do we have?

Mr. MONTGOMERY. I'm not sure. At first we were told the gentleman we wanted to hear from, Mr. Sowle, was going to testify at the House Appropriations Committee and then we found out he wasn't. But I guess they figure this is not in our jurisdiction and it gets in the executive branch, so therefore, they just didn't show up.

We took the approach, Mr. Leath, that we might be able to help them; we would want to be a part of it and find out whether it would work. But now, you know, they slammed the door in our face and we might have to take action like we did last time on contracting out if they're going to circumvent the law. It looks like they just don't learn down there and we will have to look into that matter.

I might ask general counsel, what options do we have to get them up here?

Mr. MCDONELL. I believe one of the first options of the committee is we will propose a draft to you of legislation that would insure that provisions of this OMB proposed draft would not be made part of the Federal regulations.

The other, Mr. Chairman, we could consider, is when they do provide a formal draft, we will recommend to you that we consider having them up here to explain the rationale to making regulations which ignore cost effective determinations.

Mr. LEATH. I think we need to do something, Mr. Chairman, because this is just a constant harrassment of the VA staff. We ask these people to come over here and put them on the spot for something that I personally don't think they agree with either. It creates enormous morale problems in the hospitals among the employees. To me, it is just disgusting that we have an agency of Government that just blatantly refuses to accept the fact that Congress does not go along with this line of thinking. I just wanted to express that opinion, because I know these VA people are somewhat in the middle of this thing.

Mr. MONTGOMERY. They don't look comfortable, I agree with you [Laughter.]

Mr. Hillis?

STATEMENT OF HON. ELWOOD HILLS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF INDIANA

Mr. HILLIS. Mr. Chairman, thank you for recognizing me.

We meet again with respect to the advisability of contracting out. It would appear that since our last hearing that the Veterans' Administration is now being required to consider the possibility of the implementation of an entirely new procedure. In this connection, I realize that proposed changes to OMB Circular A-76 are

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only in the draft stage and I also realize that they have not been finalized for official agency or public comment.

Mr. Chairman, I have stated before that all of us can probably agree that the stated objectives in various proposals with respect to contracting out are commendable. However, I find it somewhat difficult to isolate any concerned with the delivery of medical care. I believe it can be argued that most such activities are so interrelated as to be inseparable. I would hope that the VA witnesses would touch upon this subject this morning.

Last year the Congress passed Public Law 97-66. One of our purposes was to at least slow down wholesale cost comparisons in the Veterans' Administration medical program.

It would seem that the new draft circular would go far beyond what previously existed, taking away much of the discretionary power of the Administrator of Veterans' Affairs. In this connection, we know that the Administrator depends greatly upon the advice he receives from the Chief Medical Director Dr. Custis. Recognizing the constraints under which his representatives are testifying this morning, I would hope that they will be as candid as possible as to exactly what the draft proposal would do in the event it is actually implemented. This committee ought not to let anything happen which can adversely affect the quality of care in our VA medical program.

I would just add to Mr. Leath's comments that I find myself in agreement. Many times in other areas of the Government, at least, contracting out starts as a so-called money saving procedure, but what it really amounts to is a way to get certain items off budget. You end up many times, when you consider all of the fringes that are involved, paying more money than if you stay in house.

I think this committee, Mr. Chairman, ought to follow this every step of the way and every move that is made and get a full input into it before we ever start. Because once it starts, it is "Katie bar the door" and it is very hard to turn it around. I, for one, want to be thoroughly informed and convinced that this is the right thing to do before we begin it. That's about all I wanted to say.

Mr. MONTGOMERY. Thank you, Mr. Hillis.

I might say four of the five members here this morning are on the House Armed Services Committee, and I believe in the authorization bill we put a moratorium by law on contracting out until the Armed Services Committee and also the Senate Armed Services Committee had a chance to look at what the Defense Department was talking about on contracting out. Of course, that is a way we could go, and the Armed Services Committee did do that.

Does anybody else have any questions? The Chair will let counsel ask one or two more questions.

Mr. MCDONELL. Mr. Cook, did your task force representative oppose the recommended thresholds of 10 and 25 FTE during the deliberations on the proposed draft?

Mr. COOK. Yes, sir.

Mr. MCDONELL. Was it a consensus of the task group itself that those FTE thresholds should be included, or was this basically a mandate from OMB that these were the thresholds that they considered were important to the revision?

Mr. COOK. I believe the numerical figures were proposed by OMB, and the task group was sharply divided as to whether or not they should be incorporated into the change.

Mr. MCDONELL. Could you tell us, has the draft revision of the circular been discussed with the Administrator?

Mr. COOK. The specific draft revision was discussed with him only in the context that he addressed in his response to a letter from the chairman and from Mr. Hammerschmidt. At that point he was made aware of the possible provisions.

Mr. MCDONELL. He has not expressed an opinion on the thresholds?

Mr. COOK. Not at this time.

Mr. MCDONELL. In the Administrator's letter to the chairman in response to our budget questions, he indicated that you are planing to conduct A-76 cost comparison studies on ground maintenance, medical transcription, and painting, if you receive the $2 million that you requested in your fiscal year 1983 budget.

Don't you presently do contracting in those areas?

Mr. COOK. Yes, sir, we do.

Mr. MCDONELL. Couldn't you let contracts under your existing authority in title 38 and then avoid spending the $2 million for cost comparison studies?

Mr. COOK. If we were to do so, and if the cost of those functions were high enough—overlooking the 10 and 25 and assuming it was much larger—it is my view it would be in contradiction of A-76 if we were to do so without making the cost study.

Mr. MCDONELL. Then as I understand it, what you are saying is the cost comparison studies actually would not be made under your existing authority, is that correct or not?

Mr. COOK. We would not make the same kind of cost-comparison studies that we are required to make under OMB Circular A-76.

Mr. MCDONELL. OMB figures show that approximately 60 percent of the activities reviewed are eventually contracted out, Mr. Cook. What contingency plans has the VA made to place the surplus or excess employees in this regard?

Mr. COOK. We have at this point in time not completed any formal plans. We would assume that if we come close to the actual contracting out of some functions currently performed in house, that we would first of all consider the reassignment of employees to existing vacancies, to the extent that that could be done, and as a last resort would go to reduction in force.

Mr. MCDONELL. However, at this time, you do not have a formalized plan; is that correct?

Mr. COOK. That is correct.

Mr. MONTGOMERY. What happens to these people? Say the driver of a Government vehicle, what generally would happen to him if you contracted it out? Do you find another position for him?

Mr. COOK. We would attempt to do so, yes, sir.

Mr. MONTGOMERY. If you don't, what happens?

Mr. COOK. He would be separated under reduction-in-force procedures.

Mr. MONTGOMERY. You are talking about 7,100 people?

Mr. COOK. Yes, sir.

Mr. MONTGOMERY. In these categories, where would that mainly come out of, your hospital care?

Mr. COOK. Yes, sir.

Mr. MONTGOMERY. And medical care?

Mr. COOK. Yes, sir.

Mr. MONTGOMERY. Hasn't this administration just recommended that we add a number of personnel to medical care for fiscal 1983? How many people was that?

Mr. COOK. I don't recall exactly, sir, but it was over 2,000 net.

Mr. MONTGOMERY. The administration recommended they be added to medical care?

Mr. COOK. Yes, sir.

Mr. MONTGOMERY. And we are talking about contracting out and reducing it by 7100.

Counsel tells me it could go as high as 35,000.

Mr. COOK. That's correct, because if we consider those functions that employ in excess of 25 employees then we get into a whole new range. Many large functions could be contracted out. Under the current conditions they could not because of the restraint upon any cost studies for large functions in the Department of Medicine and Surgery. But if that were to change, it could go as high as 35,000.

Mr. MONTGOMERY. Could you explain the 25,000, what that is?

Mr. COOK. Below 25 full-time employees we would not make the detailed management plans and cost studies that we would above that figure.

Mr. MCDONELL. Are you speaking of the 25 FTEE limit, your ceiling on contracting out, having a different procedure than what you would have under A-76, is that correct?

Mr. COOK. Well, even under the revised A-76, there would be two procedures—one for under 25 and one for over.

Mr. MCDONELL. They are also going to increase the threshold, though, from 100,000 up to 500,000; isn't that part of the recommendation for this new revision?

Mr. COOK. That's correct.

Mr. MCDONELL. If I may, Mr. Chairman, may I ask one other question? This may help to give us a better picture of what your actions are presently in the administration in regards to the cost comparison process, which we know is long and complex.

We are particularly concerned with the quality of management reviews that proceed the cost-comparison studies. We know that you have done some training, and you have had meetings—I believe two of them nationwide here in the recent past. I believe that was for DM&S.

I am wondering what training are you providing to the managers in your other departments.

Mr. COOK. To the field managers, we have not provided training. To the headquarters staff of the Department of Veterans' Benefits and Department of Memorial Affairs, there is a rather detailed training film that was developed which discusses the process of management review and cost comparison. This has been provided to the headquarters staff, together with——

Mr. McDONELL. In the Department of Veterans' Benefits, which is a very large organization, are they presently conducting any cost-comparison studies. There are some significant changes.

Mr. MONTGOMERY. We would like to have it for the record and, without objection, it will be so entered.

Mr. McDONELL. We have the representative here from the inspector general. Could we have your name again, sir?

Mr. SLACHTA. Michael Slachta. I am the acting deputy assistant inspector general for regional audits.

Mr. McDONELL. Mr. Slachta, the committee understands that your office recently did work on A–76 in Denver and that apparently it was associated with your boss' desire to become proficient in auditing the contracting-out process.

Could you give us an explanation of what actually went on out at Denver?

Mr. SLACHTA. At the Denver VA Medical Center we did no A–76 work whatsoever. The Denver Medical Center was subjected to what we call a routine cyclical audit. We had a team there from our Midwestern field office. We were aware that the Army's Fitzsimmons Medical Center had done an A–76 review and had installed a contractor for the hospital food services.

I went out to look at it—Mr. Sato also went out—to look at what the Army had done. Under the A–76 Circular, we are going to be required to do post cost comparison studies. I wanted to know just exactly what that would entail. So we went out and looked at Fitzsimmons' operation and talked to the comptroller's people to see just exactly how much audit work was involved.

An audit right now, in my view, cannot do an A–76 study by itself. It is just too resource intensive. There was no A–76 work done whatsoever at the VA Medical Center in Denver.

Mr. MONTGOMERY. I wish the gentleman would talk into the microphone. We can't hear him up here.

Mr. SLACHTA. I just said we did no A–76 work in Denver's dietetic service whatsoever. In fact, the only audit work that was done in the dietetic service at the VA Medical Center, Denver, Colo., was a look at their staffing level. This was in the preparation work before we went to the site to determine whether or not dietetic service would get an audit. It did not.

Mr. McDONELL. As I understand it, you did go to Fitzsimmons; is that correct?

Mr. SLACHTA. That's correct.

Mr. McDONELL. And you went there for the purpose of learning from the Army what the procedures were for auditing an A–76 Circular activity; is that correct?

Mr. SLACHTA. That is correct.

Mr. McDONELL. What did you find when you went to the Fitzsimmons Hospital as far as their experience with contracting dietetic service?

Mr. SLACHTA. The Army people that we talked to were not happy with the contract. In fact, they had sent a cure notice to the contractor.

In talking with the contractor, he indicated that he had not properly read the statement of work. When he made his bid, he was not

familiar with the hospital operation of the patient tray service, which was rather resource intensive and which he had not planned for. He felt he could make a go of the contract, but I'm really not familiar with what happened after that point.

I did look at what the Army had done to get into the A-76 process. I know that the audit staff spent some 732 hours for just their part of the A-76 study, which is a review of the cost comparison work. That is awfully resource intensive.

Mr. McDONELL. If I understand what you are saying, they spent an exorbitant amount of time with their own staff in order to make a cost comparison study.

Let me ask you this. If your office is going to be committed to making audits of A-76 contracts, and if they become the magnitude that we understand OMB would like VA to enter into contracts of great numbers, what sort of resources would it take for the IG's Office to monitor these and audit these contracts?

Mr. SLACHTA. It would be very difficult for me to say exactly what kind of resources we would need. It would depend upon the magnitude and the numbers of contracts and A-76 studies we had to look at. We had planned that we would probably be involved in at least four of these a year—it's a plan, so I don't know whether it would accurately reflect the numbers or not—and we had allocated some 74 staff-days for each one of these. But after looking at what Fitzsimmons had done, we are way short of what we are going to need. I couldn't give you an exact figure at this time.

Mr. McDONELL. I wonder if you could possibly provide the committee with a written response that would maybe give an estimate of what you consider it would be based on the present requirements of the circular.

Mr. SLACHTA. Yes, sir, we would be glad to.

[The information follows:]

At this time we are unable to project the proportion of Inspector General resources needed for A-76 oversight. By the nature of the work required in the oversight role, resource projections will be fully dependent on how many, degree of complexity and type of A-76 reviews accomplished by the Agency. However, a review of another audit agency's involvement in a relatively uncomplicated review indicates that heavy audit resources are required.

Mr. MONTGOMERY. Before recognizing Mr. Hillis, I would like to ask the witnesses, were you instructed by OMB or by the Administrator to not answer our questions fully or give your opinions? Were you called in, Mr. Cook, and told to be careful in what you said to this committee?

Mr. COOK. No, sir; I was told to make clear to the committee that whatever I expressed were my views and not necessarily the Administration's position.

Mr. MONTGOMERY. Well, I haven't gotten your views.

Inspector General, what about you?

Mr. SLACHTA. I was given no instructions whatsoever by Mr. Sato. I was to answer the questions as fully as I could.

Mr. MONTGOMERY. Miss Quandt?

Ms. QUANDT. I was given no specific instructions.

Mr. MONTGOMERY. Thank you. Mr. Hillis.

Mr. HILLIS. Thank you, Mr. Chairman.

Any of you could answer this question or share your time in the answer, if you would.

If the new draft of circular A-76 were to become finalized, in your opinion what would be the effect on the VA's new automatic data processing procedure and would you have to contract these procedures out?

Mr. COOK. There would be no immediate impact because we have already determined that any study we make of ADP will be some months away before we begin. Certainly, ADP under A-76 is a potential candidate for contracting out, the computer operation.

Mr. HILLIS. That's what concerns me, Mr. Cook, because I know that the VA has just instituted many of these procedures and gone through a long shakedown, and a rather expensive shakedown period. The system is working pretty well now, I think, from what our committee has been informed. It worried me and is of great concern that just when we get this onboard that maybe you might have to go through something different or start down the road with a whole new list of procedures.

How do you view this?

Mr. COOK. In my view, the agency will probably defer any studies in ADP contracting out for a considerable period of time. I don't know that we might not decide that the Administrator should not exercise his option to exempt it.

Mr. HILLIS. Thank you.

Mr. MONTGOMERY. One other question before we call our next witness.

Mr. Cook, you have had long experience with Federal supply activities. Have you ever had to conduct a contracting-out business with regulations that told you not to consider the cost of conversion to contract?

Mr. COOK. Definitely not, sir. It has always been my position that I had to consider cost.

Mr. MONTGOMERY. Well, under this new regulation, they are not comparing the cost; is that correct?

Mr. COOK. If you have 9 or less employees, you do not under this new regulation. If you have 25 or less, you only do it under very limited circumstances.

Mr. MONTGOMERY. Thank you, Mr. Cook.

Mr. Hall.

Mr. HALL. Mr. Cook, did I understand you to say that there is a possibility, if this A-76 inventory is implemented, we could lose 35,000 people?

Mr. COOK. That's the total A-76, sir, not just the changes that have been made recently.

Yes, sir, that's right. That's the potential.

Mr. HALL. Where would those people come from? In what areas would they be working that they would lose out?

Mr. COOK. Largely in the areas of buildings and grounds maintenance, housekeeping, laundry, perhaps dietetic service, support people.

Mr. HALL. I assume you have read with particularity this circular A-76.

Mr. COOK. Yes, sir.

Mr. HALL. Does that comparison contain a built-in bias in favor of contracting out the services?

Mr. COOK. From my perspective, yes.

Mr. HALL. Once the matter is contracted out, no further comparisons with in-house costs are made; is that correct?

Mr. COOK. There should be a review. A-76 calls for a review, as I recall it, every 3 to 5 years to determine that the original decision was correct.

Mr. HALL. Well, when you contract out, is it a fair statement to say that the cost to the taxpayer increases?

Mr. COOK. Certainly in the initial year of contracting out, because you have termination costs at the same time you are paying for the cost of the contract.

Mr. HALL. If it is contracted out, isn't the contractor free to escalate his costs without fear that the function will be returned to performance by Government employees?

Mr. COOK. We can, up to a point, safeguard against that, Mr. Hall. We can write the contract for a 3-year period subject to the availability of funds and specify the amount of escalation that we would accept, probably linked to one of the various economic indices.

Mr. HALL. Once these matters are contracted out, they usually stay contracted out; is that not correct?

Mr. COOK. That is correct.

Mr. HALL. So really you don't have the control over an out-of-house as opposed to an in-house bit of construction as you would if A-76 was not into practice?

Mr. COOK. You have some control, but it is not as absolute as it is with providing the function in-house.

Mr. HALL. You can't control your costs as well, can you, if it is contracted out?

Mr. COOK. On some large contracts, it is my opinion you could. Some of the smaller ones, perhaps not.

Mr. HALL. Would there not be many small contractors involved in this procedure?

Mr. COOK. There could very well be, yes, particularly if we channel some of these contracts to small businesses.

Mr. HALL. Do you have any estimate with reference to the 35,000 people who might be RIF'd as to what amount of money that would approach in salaries, the cost to the Government to let those 35,000 people go off the payroll?

Mr. COOK. I have not calculated that, sir, but I would be happy to do so and provide it, an estimate.

[The following was subsequently submitted for the record:]

Salary Cost of 35,000 VA employees potentially disaffected by A-76 is $615,930,000. This is based upon an average salary of $17,598. It is estimated that the initial cost of RIFs, if all functions were converted to contract, would be $12,318,600. This figure is computed by multiplying 2% by the salary cost of $615,930,000 as prescribed in the proposed revision to the Cost Comparison Handbook.

Mr. HALL. Do you have any estimate at this time? Would it run into the billions of dollars?

Mr. COOK. It would certainly run into the millions of dollars. I don't believe it would run into the billions, no, sir, not in VA.

Mr. HALL. Is OMB pushing this thing pretty hard, this A-76 business?

Mr. COOK. They are aggressively asserting that this is, from their standpoint, the Government policy, to rely on the private sector for these types of activities.

Mr. HALL. Do you believe that from an overall standpoint these functions can be performed better on an in-house basis than otherwise?

Mr. COOK. Some functions, yes, sir. Others I think can be performed equally well either way. Buildings and grounds maintenance, I think perhaps could be performed effectively either way. We do a great deal of it by contract today.

Mr. HALL. Thank you.

Mr. MONTGOMERY. Thank you, Mr. Hall.

We would like to have some other questions to submit to the witnesses, without objection, and if you would respond back in writing, we would appreciate it very much.[1] We also appreciate your being here in a rather peculiar situation, that the OMB doesn't show up and you have to come up here without their support or their feel. Thank you very much.

Mr. MONTGOMERY. I would like to call our next witness, Mr. Kenneth Blaylock, president of the American Federation of Government Employees. Also, I would like to ask Mr. Hall to take the chair at this time.

Mr. HALL [presiding.] Mr. Blaylock, we are glad to have you here today. If you would, would you introduce those people who are at the table with you.

STATEMENT OF KENNETH T. BLAYLOCK, PRESIDENT, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, ACCOMPANIED BY ARTIE I. PIERCE, PRESIDENT, NATIONAL VETERANS ADMINISTRATION COUNCIL, AFGE; DANIEL J. KEARNEY, NATIONAL VICE PRESIDENT, AND DOROTHY DEDMOND, PRESIDENT, AFGE LOCAL 1674

Mr. BLAYLOCK. Mr. Chairman, I am Ken Blaylock, and I am president of the American Federation of Government Employees. I have, to my immediate right, Arte Pierce, who is president of the National Veterans Administration Council of our union, representing 110,000 VA workers. Dan Kearney, to my extreme right, is our national vice president from the New England States. I also have Dorothy Dedmond on my left, who is president of AFGE Local 1674, the VA Medical Center in West Haven, Conn.

Mr. KEARNEY. Kenny, may I introduce Peter Hodgkins, President of AFGE Local 2610, the Togas VA Hospital.

Mr. HALL. You may proceed.

Mr. BLAYLOCK. Mr. Chairman, I have a written statement that I would like to submit for the record,[2] and in the essence of time I will only hit some highlights of that statement.

Mr. Kearney also has a written statement that we would like to have entered in the record.[3] I'm sure he will be able to comment on it as the testimony moves along.

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[1] See p. 77.
[2] See p. 35.
[3] See p. 40.

Mr. HALL. Without objection, they will be both entered in the record.

Mr. BLAYLOCK. We do appreciate the opportunity to appear before the committee again on this very important issue of contracting out within the Veterans' Administration and the impact of changes proposed in OMB Circular A-76.

In July 1981, in testimony before this same subcommittee, we testified on the general problems caused by contracting out. I would point out, Mr. Chairman, that contracting out is not new in the Government; it is not new in the VA. We have a tremendous amount of experience, especially in DOD. Many members of this subcommittee do serve on the House Armed Forces Committee and we have testified over there very recently, so we have experience in contracting out.

We do not intend to recap much of the testimony that we made in the previous hearings. Rather, we would like to focus our testimony on three areas: One, recent actions by OMB which will even more prejudice the system against the performance of essential services by Government employees; two, our efforts at the bargaining table to negotiate restrictions and methods to address the adverse impact on employees with the Veterans Administration; and three, various possibilities for legislative action, include H.R. 4851, and a moratorium on contracting out in the VA.

Finally, we would like to look at some of the other experiences in contracting out various hospital services, which will primarily be covered in Mr. Kearney's testimony.

We would like to draw the subcommittee's attention to recent actions by the Office of Management and Budget's Office of Federal Procurement Policy, in proposing changes in OMB Circular A-76 and the cost comparison handbook, and in presenting model legislation on the Government's contracting out.

The proposed changes will bias contracting out decisions even more in favor of conversion to performance by private contractors than has been the case under the already biased version of the circular and the handbook. The changes proposed by the Office of Federal Procurement Policy also threaten to circumvent the committee's actions last year on Public Law 97-66 in prohibiting the use of scarce medical funds to pay for contracting out cost studies. In addition, OMB has already implemented certain changes in both the circular and the handbook.

As revised in 1979, OMB Circular A-76 and the cost comparison handbook contain a built-in bias in favor of contracting out, as this committee has already recognized. This bias spurs contracting out of the workforce regardless of increased costs to the taxpayer or decreased control by Government managers, and it also ignores the fact there are certain inherent governmental functions which should not be contracted out.

The Office of Federal Procurement Policy proposes to require that all new starts, unless they are so-called inherently governmental functions, will be performed by outside contractors, so that totally ignores the competition between in-house and contract performance for the first time. With this change, the Office of Federal Procurement Policy has dropped any pretense that it intends that cost-effectiveness should govern the decision on whether to contract

out. Instead, any new start which does not meet some unspecified test of being inherently Government will automatically and unthinkingly be assigned to outside contractors.

I would like to point out something Mr. Chairman, about the terminology "inherently Government"—and we totally agree there are functions in Government that should never even be considered to be contracted out. But if you read the manuals and OMB Circular A-76, you find only a very vague definition. It is really not specified. And when Federal managers try to determine, as they make their review, whether a function should be contracted out or should not even be considered for contracting out because it is inherently govenmental, they do not have adequate guidelines either in the handbook or in A-76 to make that determination.

In proposing this change, the Office of Federal Procurement Policy drops all pretense that it wants genuine competition in costs to play a role in contracting out decisions. At AFGE, we believe that dedicated VA employees can perform the work more efficiently, if they are given a chance. These employees work day after day for the veterans and the public. They don't need to turn a profit or pay a dividend, while the outside contractors are obviously in the business primarily for profit.

The cost to the taxpayer is increased because, in practice, once a function is contracted out, no further comparison with in-house costs is made. Contractors can very well take a function at a break-even cost the first time around. The next time around, it is only going to be bid, at most, between contractors, so the costs automatically go up. That has been our experience with Government contracts within DOD and other agencies. Once a function is contracted out, the only concern the contractor has is that he not be underbid by another contractor.

In addition, the change on new starts compounds the current problems caused by A-76's failure to provide a usable and comprehensive definition of what is inherently governmental. At a minimum, services related to national defense and international security should be inherently governmental. Before the attempt by OMB to force the VA to implement A-76, we would have thought that medical and hospital care for veterans of our armed services—many of them suffering from injuries sustained in defense of their country—would have been a prime responsibility of Government and should be classified inherently Government. We see the care of veterans as simply an extension of the obligation of this country to defense.

Obviously, the Office of Federal Procurement Policy sees a much different limit on that definition and, consequently, the proposal to force all new starts to be contracted out will result in massive, new, costly, and disruptive contracting out. This contracting out will also prevent agencies from retaining the core capability necessary to carry out the functions in an emergency and to assess the contractor's performance and costs.

Most importantly, this change undercuts the committee's action last year in prohibiting medical funds from being used to pay for cost studies. Now no cost studies are needed for contracting out new starts; thus, the committee's goal of limiting contracting out will be undercut.

A second proposed change is to increase by fivefold the $100,000 threshold for requiring cost comparisons. In addition, contracts under $1 million would have the cost comparison process streamlined, again in some unspecified way. We can predict, however, that the streamlining will be designed to increase contracting out.

Mr. Chairman, we are seeing a new thrust in contracting out by the private sector. As you well know, it is big dollars now. At one time many of the contracts that were let and pursued by small contractors as it began in DOD was a small janitorial type contract, small food service contract, maintenance, and what have you. But the latest figures that we have seen, and as you well know, the executive branch really cannot tell this committee today how much was spent on contracting out last year, one of the reasons for the moratorium in 1979. But the last figures we saw was somewhere around $110 billion. That's big dollars and the big boys are beginning to move in. As we heard before the Armed Services Committee, the proposal is to move to corporate-type contracting out and then let them subcontract it at the facility or locale. So it is getting to be big dollars and we think we need some very definite legislative definitions and very definite legislative controls on contracting out.

The Office of Federal Procurement Policy proposes to increase the factor of the cost comparison based on Federal retirement programs. One OFPP official suggested that the current 20.4 percent add on to the cost on in-house performance as a figure for retirement costs—including the so called unfunded liability—be increased to 37 percent. These figures, of course, increase the likelihood that any cost comparison will be weighted in the contractor's favor. The increase reflects the bias in favor of contracting out. In fact, the 20.4 percent figure is sheer guesswork. OMB has never established its validity. It is more than three times the figure of 7 percent which actually is appropriated for the employer's cost that would be paid to Federal employees during the term of the contract.

OMB's proposal to raise its arbitrary add on for retirement costs is even more outrageous in light of the fact that it ignores significant changes in the actual practice of civilian pay and retirement annuities. One result of the unfair 4.8 percent pay cap last year, for example, is that the civil service annuities will also be lower because they are based on pay. Thus, the series of pay caps in recent years mandates a lowering of the retirement add on, not OMB's arbitrary increase. Similarly, the elimination of the twice-a-year cost-of-living adjustment also warrants a lowering of the estimate for retirement. Yet OMB proposes that it be increased.

OMB has never required that the unfunded liability of the social security system, a big issue today, which covers contract employees, also be added to the contractor's cost or computed in the overhead cost. If it applies costs to Federal workers on an actuarial basis, or dynamic formula as they call it, over a 30-year period, then the social security unfunded liabilities should surely be added in the same type of dynamic formula if you are going to go out-of-house with the work.

Nor does OMB A–76 impose any estimate of the eventual welfare costs to the Government when contract employees, whose employ-

ers provide no pension plans, are finally forced by age or health to stop working, and then, because they have no pension plan, rely on food stamps, medicaid, supplemental security income, and other governmental benefits. This is an excellent example of how biased A-76 is in favor of contracting out.

In its push to expand contracting out, however, OMB is not relying solely on changes in its circular A-76 and the cost comparison handbook. OMB's Office of Federal Procurement Policy has proposed model legislation governing the letting of Government contracts, including those for services. This legislation would place in the law many of the biases in favor of contracting out already in A-76.

OMB's legislation constitutes nothing less than an outright assault on the merit system which has given the American people a career civil service of dedicated, hard-working, Federal employees. OMB's legislation, and its efforts to push contracting out without legislation, constitute a return to the spoils system, where a primary use of taxpayers' money is to reward political contributions.

We all know that in the last elections private contractors made heavy contributions to campaigns, and we also know the career civil service was established to get away from the spoils system where payoffs were made for political support. Mr. Chairman, I offer to you that the contracting out and the focus that is on contracting out today will destroy the career civil service and is nothing but a return to the spoils system.

OMB's model legislation would establish contracting out authority for one individual, called the Administrator of Federal Procurement Policy, who would be given sweeping new powers under the legislation. He would become a contracting out czar.

Section 301(c) of the proposal would require the Veterans' Administration, for example, to "make its services, personnel and facilities available" to the new czar "to the greatest practicable extent for the performance of functions under this act."

Section 304 of the proposed legislation would, in effect, give the contracting out administrator the power to issue regulations and directives on contracting out and then require that any VA regulation would have to comply with those of the contracting out regulations. The only appeal permitted by the legislation would be the Director of the Office of Management and Budget, whose views on the VA system are well known already.

Section 303 would provide that "the authority of an executive agency under any other law to prescribe policies, standards, regulations, procedures, and forms for procurement is subject to the authority conferred by this act."

OMB's proposed legislation would also limit the committee's right to adopt future legislation governing contracting out in the Veterans' Administration. Section 402 of the proposal would provide:

> No law enacted after the date of enactment of this act, including any limitation in any appropriation bill or any limitation of any provision authorizing the appropriation of funds, may be held, considered, or construed, as amending any provision of this act, unless such law does so by specifically and explicitly amending or superseding a specific and separately referenced provision of this act.

So here again, Mr. Chairman, we see the drive to take total control for contracting out, even to exempt Congress from the authority that it obviously has.

We welcome the introduction of H.R. 4851 by Representative Mottl of Ohio. This bill would exempt the division of medicine and surgery from OMB directives on contracting out. However, we believe that simply taking this step would not achieve the protection for veterans care and service which the committee intended in Public Law 97-66.

There should be adequate statutory standards on contracting out for all of VA, not just DM&S. Moveover, the absence of statutory standards allows—even if H.R. 4851 were adopted—OMB to use a back-door approach in pressuring VA managers to use their title 38 authority to contract out without reference to A-76. Thus, exempting DM&S from A-76 could have the ironic and unintended effect of speeding up contracting out in DM&S without cost studies. It might thereby allow OMB and certain VA managers to circumvent the limitation of Public Law 97-66.

In addition to specific statutory standards, we would like to see a moratorium on all contracting out in VA. Mr. Chairman, we base that position on the fact that, while we don't take a posture that there are no functions of Government that should be contracted out, we do think it is time we have legislative definitions and legislative controls, in part to make determinations on what functions are inherently Government and those functions that you, as elected officials, retain responsibility for in delivering those services to the American people.

We think there should be very specific controls, so if we are going to have competition, we really have fair competition to get the work done the cheapest and in the most effective way possible.

A point that has not been addressed yet: Our experience shows that we have had tremendous problems in the area of performance under contracts. This hasn't been addressed. It is very difficult for you to find a base commander in the military anywhere who has had good experience and favors contracting out.

I can give you an example. When you talk about food service in VA, take a look at Charleston Air Force Base, where for about 5 years the food service has been on contract. You have had four different contractors and the commander has had to take it back over three times. Yet, because of the bias of A-76, although he had to take those employees back in-house for periods of 30 days, 60 days, 90 days, he had to then put it right back out on contract.

Now, the diets and dietary services is obviously a part of treatment in hospitals, and if that was in a VA hospital, what kind of problems would we have with that kind of disruption in food service and dietary service for veteran patients?

Mr. Chairman, I am not going to go into the rest of my statement. I would simply like to say that I would be glad to answer any questions. And I think Mr. Kearney would like to make a couple of comments from his statement.

[The statement of Mr. Blaylock appears on p. 35]

STATEMENT OF DANIEL KEARNEY, NATIONAL VICE PRESIDENT, AFGE

Mr. KEARNEY. Thank you very much, and congratulations to the committee's action last year when you blocked contracting out in DM&S.

I know this committee will be told by OMB that needed services can be provided more cheaply by outside contractors. Their reasoning is being supported by billion dollar corporations who are so anxious to do business with the Government.

Are they successful in providing services in a hospital? For instance, in the Boston area I surveyed 10 major hospitals and found that none of them are contracting out any of their major services, nor do they intend to fall victim to the siren call of the many entrepreneurs who are lined up alleging that the care they will provide is as good or better and less expensive than the in-house service the hospital provides.

Also, the American Federation of State, County and Municipal Employees, which represents State hospitals and county hospitals, tells me that in those 15 hospitals none of them are contracting out any services.

I think we have to realize, with this new ceiling, so called, of 25 full time employees, it could interrupt, for instance, services such as the dental care in a hospital that has less, about 14 or 15 people. Those dentists work very closely with the rest of the hospital personnel. For instance, they are on the ward. They are helping the doctor if there is a problem with the patient.

The pharmacy is the same way. The pharmacy is unique. It has access in a hospital, for instance, to the medical records. They work with the doctors on the wards and the nurses, et cetera.

A hospital must work as one team. They cannot have 8, 10 or 12 different contractor personnel in there to work with. Dietetics, for instance, has got to be able to work. It is involved with patient care since the trays and diets go directly to the patients.

I know I'm hurrying, and I don't mean to, but I appreciate your indulgence.

I would like to conclude by saying every Federal employee is bound by law not to strike. The VA hospital system has never had any labor disruptions in the many years of its existence. In the private sector, there have been many strikes in hospitals. For instance, a hospital not too far from where I live in Massachusetts, with about 300 beds, had a nurses strike last summer. Some of those patients had to be moved 100 or 150 miles in order to get them in hospitals to receive care. If that happened in Togas, Maine, for instance, there are 700 patients in that VA hospital and they would have to helicopter them to Boston and farther south in order to provide care for them.

The care that VA employees provide is a case of veterans providing care for veterans, since about 70 to 80 percent of those employees in those hospitals are veterans themselves. It is a unique relationship between the service people and the veterans.

I would like to say this, also, that we have found that hospitals, in order to provide quality service, must work as an integrated

unit. Contracting out of selected services would fracture this concept and diminish quality. Please don't let that happen.

Mr. HALL. Thank you very much.

It is rather difficult to ask questions when you are totally in accord with what has been said from my standpoint. I would like to ask one question, Mr. Blaylock.

Of course, we know that the union membership has several hundred thousand Federal employees, and with the threat of this Circular A-76, why hasn't the union sought some protection for these employees during your contract negotiations? Maybe you did, I don't know.

Mr. BLAYLOCK. You're talking about why didn't we take up contracting out with management?

Mr. HALL. Yes, sir.

Mr. BLAYLOCK. We did, Mr. Chairman. As I point out in my prepared statement, we attempted in the national contract, which has been going on, by the way, for some 14 or 16 months now that we have been at the bargaining table, we attempted to cover these issues. We were told it was nonnegotiable. On other areas we wound up in an impasse. Management has totally refused to bargain on those issues.

We now have, I think, about five issues before the Federal Impasses Panel. But the VA has totally refused to bargain on the issue of contracting out.

Mr. HALL. Is this one of those five issues that you have up before the——

Mr. PIERCE. They have declared contracting out as a nonnegotiable item, but strictly a management prerogative to make determinations.

Mr. BLAYLOCK. That will go to the Federal Labor Relations Authority as a negotiability issue rather than one of the impasse items. It will be in litigation probably for 2 years.

Mr. HALL. The gentleman from Michigan, Mr. Sawyer.

Mr. SAWYER. I would just like to say, as to the last witness, that the observation vis-a-vis dentists and whatnot is not correct. None of those are covered by the regulation. They are exempted.

Any hands-on care, including nursing, dental, nursing assistants and so on, are all exempted.

Mr. KEARNEY. I am glad to hear your assurances, Mr. Sawyer. I have had so much experience in contracting out that I am doubtful that they don't fall prey to contracting out.

Mr. SAWYER. Well, there is a list of the items that are included, and none of them bear any relationship to hands-on care. I'm not arguing with your position. I am saying your facts weren't correct.

Thank you. I yield back.

Mr. HALL. The gentleman from Texas, Mr. Leath.

Mr. LEATH. Thank you, Mr. Chairman.

I agree with you, that it is difficult to ask questions when you have hit the nail on the head, Mr. Blaylock. I just think it is vitally important that you relay to your members across this country and in the hospitals that this committee is fully capable of stopping this again. I don't think there is any question but that there will be some legislation drafted that will attempt to continue to specify even more minutely.

It is incredible that the people at OMB—that either one of two things is happening. They can't read and can't comprehend what they read what comes out of this Congress, or else they just are blatantly intent on defying the will of this Congress. I think, either way, we're not going to let that happen.

It appears to me, with all the problems we are having with the budget in this country today, that OMB would be directing itself at how we are going to solve this massive deficit that we have got instead of trying to figure out how they can dismantle the VA hospital system. I think this thing goes much deeper than what appears on the surface. I think it is part of what we have faced for years and years since OMB was created, just a direct effort to attempt to dismantle the VA hospital system.

I think your statement points out very graphically something that I know the majority of this committee feels, that the health care to the veterans of this country is truly merely an extension of our obligation to defense. In spite of the fact it can't help but create apprehension and concern among the thousands of dedicated employees that we have in the VA hospitals around the country, I hope that you will adequately address that by pointing out to them this committee is not going to sit by idly and let this happen.

Mr. BLAYLOCK. Mr. Chairman, when I leave here I am headed to Atlanta, Ga. We have a political action conference, and there is about 350 people down there—about 100 of them are from Texas—and I will be glad to relay that message for you.

When you mentioned the union, though, I would like to make one point that Mr. Kearney closed his remarks with, and that is labor relations. The treatment of veterans obviously is essential, and every function in a hospital, whether it be hands-on or whether it not be hands-on, obviously it is essential to the operation of that hospital and the treatment of those patients.

We decided some time ago that OMB was on a route of contracting out and that we had two obligations to our membership. One was to protect their jobs, and two, under our union's constitution, we do strive for effective, efficient government. We are organizing contract workers, and the one item that we did get into OMB Circular A-76 that gives some protection to the workers is the fact that they have right of first refusal if it goes contract and everything else fails.

We organized those workers under the National Labor Relations Act, and the NLRB. Federal workers are told on the one hand you can't bargain on pay, you can't bargain on impact if your jobs are going to be contracted out, you can't bargain on retirement, health benefits, and so on, because you are a public servant and your service is so essential to the American public that you can't have these collective bargaining rights. Yet we are seeing thousands of their jobs contracted out, and then we bargain, and we bargain with that contractor, and we build up a good strike fund for that private sector unit that we're building. We go to the wall with that contractor and, if necessary, we strike. We are prepared to do that.

I just tell the committee this to show the two sides of the issue and really the double standard that is applied.

We just organized, as an example, the public health hospital in Seattle, Washington. As you well know, it was decided in the

budget actions last year that public hospitals ought to be closed down. We organized that hospital and we got 100-percent membership out there, and we are fixing to go to the wall now with the people who are now running it in the private sector. I just want to make you aware of the labor relations that is involved here also.

Mr. KEARNEY. Mr. Chairman, one more thing.

I am not quite sure what hands-on care really means. I heard Mr. Cook earlier say they were contracting out radiology. That's a part of the medical service. Will they contract out social workers, for instance, that are involved in the hospitals and the kinds of jobs they do for the veterans? Will they contract out pharmacy? Those are all under 25. When I read that under 25, I get suspicious of what OMB is going to do.

Hands-on care, to me, means also dietetics, housekeeping, maintenance, and all those employees involved and connected with patient care through the services they provide.

[The prepared statement of Mr. Kearney appears on p. 40.]

Mr. HALL. Thank you.

I have two instruments that I would like to make a part of the record. One is a letter dated April 23, 1982, from Geraldine A. Ferraro, chairwoman of the subcommittee on human resources, writing with reference to this OMB Circular A-76, giving her ideas and her protestations about this circular.[1]

Also a letter dated April 27, 1982, to Hon. Sonny Montgomery, chairman of this committee, commending him for holding hearings on the application of the draft revision of OMB Circular A-76.[2]

Without objection, both instruments will be made a part of this record.

Mr. HALL. Mr. Won Pat from Guam, we would be happy to hear from you, sir.

Mr. WON PAT. Thank you, Mr. Chairman.

I don't have any questions, but I do want to go on record associating myself with the remarks of my colleagues on this committee with respect to OMB Circular A-76. This matter has been the subject of great concern to us on the Armed Services Committee, particularly myself, having a constituency that is largely employed by the Federal Government. We have instances where contracting out has seen the elimination of employment.

I have been able, of course, in the past to work out some solution, but it usually doesn't happen all the time. I am very glad that this committee is taking steps to do something about this.

I believe only the Congress can find a solution, in the interest of all our people who are working for the Federal Government.

Thank you, Mr. Chairman.

Mr. HALL. Thank you.

Mr. Blaylock, we appreciate you and those who have assembled with you for your testimony. Certainly it will be given very close scrutiny. Thank you very much.

Mr. BLAYLOCK. Thank you very much, Mr. Chairman.

Mr. HALL. Next we have Mr. James Peirce, President of National Federation of Federal Employees. Let me re-emphasize the fact

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[1] See p. 67.
[2] See p. 67.

that we have a 10-minute time limit on the presentation of your testimony, if you would hold within that time, please.

Mr. Peirce, you might introduce the gentleman who is seated to your left, if you would, for the record.

STATEMENT OF JAMES PEIRCE, PRESIDENT, NATIONAL FEDERATION OF FEDERAL EMPLOYEES, ACCOMPANIED BY DAVID GUSKY, LEGISLATIVE DIRECTOR

Mr. PEIRCE. Mr. Chairman, this is David Gusky, my legislative director.

Mr. HALL. You may proceed.

Mr. PEIRCE. Mr. Chairman, if you please, I would like to have our statement entered for the record and I will just make a brief statement in addition to that, and then I will be available for questions.

Mr. Chairman, the NFFE is pleased to appear this morning to discuss the draft revision of Circular A-76, which has yet to be distributed for public comment.

Mr. Chairman, this may well be one of the most dangerous moves that we have seen directed against the Federal bureaucracy. We are now just one step away from big business running the Government. Plans are in the making to turn over large sections of the Federal Government to private sector contractors. A preliminary draft of the revision to Circular A-76 outlining the conversion of Government functions to the private sector was developed and perhaps even written in a meeting the administration held with a coalition of top business representatives. This draft has been quietly circulated among agency heads and business executives before the public or unions had a chance to see it. If it gets big business' stamp of approval, we could see some devastating changes to the Government's policies on contracting out.

This, coupled with earlier GAO cautions that private sector consultants to the Government have become increasingly involved in prohibited policymaking and inherently governmental areas, is cause for great alarm. The claim that big business is one step away from running the country, you see, is no exaggeration.

The revised draft of Circular A-76, if adopted, would mandate agency heads to contract out by September 1983, commercial activities with 25 or less full-time equivalent positions without a cost study. It also allows agency heads, who are political appointees fresh from the private sector and expecting to return to business, to waive requirements for cost comparisons when replacing in-house operations with private sector contractors. The criteria for waiving cost studies are so loose they would not prevent abuse by individuals tempted to impress or reward private business contracts.

Mr. Chairman, this is a direct attack on the bureaucracy to reduce it to a point that it would be ineffective, and it would install a spoils system of the magnitude that this country has never seen.

It is well known that career Federal employees are the mainstay, the stabilizing factor of the Federal Government. Even in critical times such as Watergate, the career employee assured business-as-usual within various functions of the Government service. At such critical times it is hard, if not impossible, to visualize the same ex-

ample occurring within numerous contractors who perform various functions of Government.

Further, activities today, and as we see, would not have contract development personnel with the expertise to compete against high-power contract specialists from the private sector. This results in shabby contracts generating cost overruns and low quality products. Additionally, activities do not have appear to have sufficient personnel nor the quality of personnel necessary to administer contracts in a cost-effective manner. Thus, we begin to see the danger facing us.

Mr. Chairman, in the Veterans' Administration hospitals virtually every activity, aside from top administrative functions and medical treatment, would be forcibly contracted out under the new Circular A-76. Pharmaceutical, food and media services, maintenance, medical records processing, storage and distribution, environmental sanitation and keypunching would have to be awarded to private contractors without cost comparisons since almost all these functions have fewer than 25 employees at each hospital.

Finally, it is deeply disturbing that a document of this nature was permitted even at the draft stage. Its contents reflect such a total lack of concern for sound, efficient Government, such an arrogant disregard for the public trust, we believe its authors are not proper candidates for public office. We have already asked Mr. Donald Sowle, the Administrator of the Office of Federal Procurement Policy, which must take responsibility for the draft, to resign. We hope he accedes to our request and takes with him those associated with the document's creation. We doubt this will occur.

But if NFFE's action does nothing other than call attention to the seriousness of this issue, it will have served a worthwhile purpose.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Peirce appears on p. 42.]

Mr. HALL. Thank you, Mr. Peirce.

I understand your unionship, as I asked Mr. Blaylock, has several hundred thousand members.

Mr. PEIRCE. Yes, sir.

Mr. HALL. With the threat of this Circular A-76, does your union seek any particular protection for your membership during the contract negotiations?

Mr. PEIRCE. Yes, sir, we have in the past. I must say first that title 7 of the Civil Service Reform Act, in section 7106, provides that contracting out is a prohibitive management rights area, meaning that we can't negotiate it.

Mr. HALL. You have met the same fate that Mr. Blaylock has met?

Mr. PEIRCE. We have. We have tried to bargain around this, and in the one instance where we wanted to look over the shoulder of management in the process of contracting out, the Federal Labor Relations Authority decided that we didn't even have that right.

Mr. HALL. Mr. Leath, the gentlemen from Texas?

Mr. LEATH. No questions.

Mr. HALL. Mr. Won Pat?

Mr. WON PAT. No questions, Mr. Chairman.

Mr. HALL. Thank you very much, gentlemen. Your testimony certainly will be considered.

Mr. PEIRCE. Thank you, Mr. Chairman.

Mr. HALL. The next witness is Mr. Bun Bray, executive director of the Federal Managers' Association. Mr. Bray, you may proceed.

STATEMENT OF BUN B. BRAY, EXECUTIVE DIRECTOR, FEDERAL MANAGERS' ASSOCIATION

Mr. BRAY. Thank you, Mr. Chairman.

My name is Bun Bray. I am the executive director of the Federal Managers' Association, which is the Federal Government's oldest and largest organization of managers and supervisors in the Government.

Mr. Chairman, before I begin, I would like to make this very obvious statement; that is, for OMB and this administration to make it much easier to contract out is quite in line with the administration's handling of the civil service. I have been in this town, in this kind of work, since Truman's administration. In fact, I spent 14 years as staff director of the House Manpower Subcommittee. This administration is making less use of the careerists of any administration I have seen, Democrat or Republican. In fact, we are having a two-team system, the careerists and the political appointees.

We applaud you for holding these hearings. Most important, we also note with interest that Mrs. Ferraro, of the Human Resources Subcommittee of the House Post Office and Civil Service Committee, will hold hearings in May. I am awfully glad to hear that.

We consider the proposed Circular A-76 a damaging proposal to the Government's personnel management program and for services and security for the American people. To revise A-76 would result in the Federal Government losing direct control of thousands of employees. It would mean hundreds, maybe thousands of functions converted to contract operations without cost comparisons. It would be opening the door for increased labor costs to the American taxpayer.

Our view of Circular A-76 revised points up certainly at least two major weaknesses. Item 7(e) reads:

> This circular will not be used to justify a conversation to contract solely to avoid personnel ceilings or salary limitations. However, when justified under this circular, agencies shall contract out regardless of the relationship between personnel levels and authorized ceilings.

Here is a fine example of two statements, two sentences, one plus and the other minus. As a result, it would appear to us in FMA that you can contract out if you have personnel ceiling problems. The positive first sentence is negated by the second.

For years we have maintained that OMB has never monitored the continued use of contractor personnel, regardless of cost, to avoid OMB and/or congressional personnel ceilings. With this proposed change, OMB will no longer even have to consider the avoidance of personnel levels.

Mr. Chairman, we now come to the crux of this administration's proposal, namely, Item 9, "Cost Comparisons;" (a) "Common Ground Rules" (1) "Thresholds." The first question we must all

ask—is OMB talking about an activity or a function? That is a key question. However, under either definition, havoc will result.

Assuming OMB means "activity" as a separate and well identified Government entity—for example, a Social Security field office, a Veterans' Affairs field representative office, or a Department of Labor Employment Service Office—then how do you react to the operations of such service centers by profit-motivating companies?

Or let's assume "activity" actually means function. In such a case we have a naval shipyard, and without cost comparisons we must by September 30, 1983, turn over to private companies activities of fewer than 25 full-time employees, presumably such things as legal work, health clinics, training, public relations, and so forth. Or let's take a VA medical center; how many different activities would you operate by indirect labor?

To resort to indirect labor can lead only to confusion, lack of full control and authority, and eventual loss of efficiency and economy, much less reduced care for your patients in the VA medical centers.

Mr. Chairman, there has been a growing trend by recent administrations, both Democrat and Republican, to go contract. Why? There are several reasons. One, by contract operations the departments and agencies are able to avoid congressional and OMB imposed personnel ceilings. FMA has done a rather detailed study of this trend over the past 25 years. All too often the cost of going contract was not a factor. The head of the Government field activity had the work. In the Defense Department there are three sources of labor—civil service, military, or contractor. In nondefense activities you have civil service or contractor. And the end fact is we have control over only the number of civil service personnel.

I want to emphasize this point, Mr. Chairman, and Mr. Leach. Time and time again, personnel ceilings are continuing to be used to fool the American taxpayer.

Two, our Nation is economically strong due to our private enterprise system, the free spirit of entrepreneurship. Thus, the Government does not compete with the private sector. We all subscribe to this concept. But one begins to wonder about entrepreneurship and risk taking when the private company merely recruits labor to work in Government-owned buildings at Government-owned desks and benches with Government-furnished equipment and tools. Or as David Henderson said in August of 1964 on the floor of the House, "I am beginning to wonder if we aren't closer to communism than I ever thought."

There is a profit to be made by the contractor or we would not have the hundreds of private companies clamoring for Government business. It hurts to think we have a company making a profit by using the cheapest possible labor to operate our VA medical center food service, when the work was formerly performed by direct-hire civil service personnel, paid according to the law-of-the-land wages, and under the direct control of the manager of the center.

Three, the cost comparison process under OMB Circular A–76 is often a sham. Faced with arbitrary personnel limits, every means available to the contracting officer is used, including impropriety to insure the review favors the contract. In one instance, a Federal

manager's career was stalled because he refused to raise the grades of the audio/visual personnel in order to insure the function would be contracted. All except that one base went contract.

Contractors submit low bids, happily knowing that once the ceiling points are gone, they can raise the price to make up for their early losses.

Despite concerted efforts on the part of managers to streamline operations, it often doesn't matter because the outcome of a review is often predetermined. Although A-76 purports to require that savings must be achieved by contracting out, the requirement is totally ignored when personnel ceiling are the bottom line instead of sound management principals.

Then, too, you frequently are working with two different sets of wage rates. Mr. Chairman, I want to emphasize this point right here. We are having two sets of cards. The Federal Government, in all its wisdom, sets the pay of the Federal employees. In turn, the Federal Government allows the private sector to pay still a different wage rate.

Mr. Chairman, as Federal managers, we are certain that the Government's civil service work force is as dedicated, able and cost effective as any work force in our Nation, private sector, State and local governments. Therefore, over the long haul the Government careerist will get the job done as timely, or efficiently, often less costly, than the private sector personnel.

The Federal Managers' Association recognizes and accepts the use of contractor personnel and consultants in many instances. This type labor force can and often should be used to level off the peaks and valleys of labor needs. There are one-time requirements for special skills that makes it realistically and economically feasible to use outside-of-Government personnel. Then, too, we cannot support an in-house operation that is considerably more expensive over the long haul, all factors considered, than the use of contractors.

The Association, however, has for years worked for a realistic labor concept which is based on workload and not politics, which provided adequate personnel for the Federal manager to get the jobs performed effectively, timely, and at an acceptable quality level. That is what we are asking today.

Under current OMB contracting policies, the Government is not using the indirect labor forces to stabilize our career work force. Every month specific groups of Federal employees are worried about their future as studies are made "to keep work in-house or to go contract." Employee morale is as bad today as I have personally witnessed in some 35 years and this threat of being replaced by out-of-Government labor is going to push the morale even lower, if that is possible.

Mr. Chairman, with these points in mind, may I respectfully urge this committee take the firm stand again as it did earlier this year and veto any proposed OMB cost studies for any services involving patients and also to urge this Congress to require of OMB procurement policies that are realistic, cost effective, and that preserve the Federal Government's career civil service work force, rather than destroy it which the proposed Circular A-76 would eventually do.

In closing, Mr. Chairman, may we briefly remind ourselves that through Democratic and Republican administrations the Government's work force has provided the American people the most efficient and effective Government in the world. This work force has carried us through wars, economic disasters, and Watergate. It put men on the Moon and has discovered many of the basic scientific revelations of this century.

Mr. Chairman, I again appreciate you holding this hearing on a very important issue relative to the use of our human resources.

If you have any questions, I would be happy to try to answer them.

[The prepared statement of Mr. Bray appears on p. 45.]

Mr. HALL. Thank you, Mr. Bray.

You indicated that this is not a matter that has just come up under the present administration. You say it has come up under both Democratic and Republican administrations.

Mr. BRAY. Right.

Mr. HALL. Based upon your long tenure in this place, when did this concept first breathe life?

Mr. BRAY. It first came out really as we started work with NASA and going to the Moon. We could not get the people. The salary rate was too low generally.

Mr. HALL. You're going back to the 1960's?

Mr. BRAY. Yes, and even before that, when we needed to get talent and couldn't get the talent, so we went to the outside. I think that was probably the first big factor.

Then over a period of time it became quite popular, of course, to hold down the number of people on the direct labor force. So it was very nice to go home and say you voted to hold the Department of Navy down so much, the VA you did not add so many more, while at the same time we were by indirect means adding on to the labor force. Dave Henderson many times said that we should throw out and do away with the personnel ceilings and go to a total dollar concept.

Mr. HALL. When did this concept first appear with reference to the Veterans' Administration, the veterans hospitals?

Mr. BRAY. I would say much more recently. I did not see it in those early years in the VA. I did not see it back in the sixties.

Mr. HALL. You made one statement on page 3. You said that personnel ceilings are continuing to be used to fool the American taxpayer.

Mr. BRAY. Yes.

Mr. HALL. Would you elaborate on that some, please?

Mr. BRAY. My friend, Porter Hardy of Norfolk, made that statement over in the Rayburn Building in about 1969.

It is simply this: We have today fewer people on the Federal payroll based on population than we did during, for example, President Harry Truman's time. We are continuing to hold down and keep in line the number of employees working in a particular department or agency, and brag about it, and then turn right around and get a contractor to do the work that normally would be performed by the direct-hire people.

Therefore, I think we are fooling the American people. When you and I paid our income tax last week, it was not on ceiling points but in dollars. That's what we have got to think about.

There is not a person in this town, Mr. Chairman, that can tell you how many indirect man-years the Federal Government is buying today. There is not a person in this town who can tell you that.

Mr. HALL. Do you share the view that approximately 35,000 people could be out of work if this is implemented?

Mr. BRAY. They could be out of work on the direct payroll, but you and me as taxpayers are paying even more based on the experiences I have had in the long haul. That's the thing that is distrubing to me, that we're talking about economy, and here we are opening the door for more expensive labor than a restricted and controlled labor.

Mr. HALL. Thank you, Mr. Bray.

Mr. Won Pat, do you have any questions?

Mr. WON PAT. No questions, Mr. Chairman.

Mr. HALL. Thank you very much for your statement.

Next we have Mr. Charlie Joeckel, assistant national legislative director, Disabled American Veterans. We're glad to have you.

STATEMENT OF CHARLES E. JOECKEL, ASSISTANT NATIONAL LEGISLATIVE DIRECTOR, DISABLED AMERICAN VETERANS

Mr. JOECKEL. Thank you, Mr. Chairman.

First let me apologize for not having a written statement. I would request permission to submit one for the record.

Mr. HALL. It will be so ordered.

Mr. JOECKEL. We originally intended to submit a statement for the record, but when we found out the VA didn't have a statement, we tried to see if we could get away with the same thing.

I wish to extend our thanks to you and to the subcommittee as well as the counsel for letting us express our views on such short notice.

In expressing DAV's views, let me say that we thought the Congress had already addressed this issue last year. All of the witnesses who preceded me alluded to the impact that the revised A-76 Circular would have upon the health care system and services provided to the veterans, and we agree with them. But that is all part of the hearing record that we built last year and, in essence, the DAV was satisfied that Public Law 97-66 addressed the OMB A-76 Circular.

Under the provisions of Public Law 97-66, the VA was granted authority to request funds for contract studies, and the VA has done so. Now we learn that OMB would revise the circular in such a fashion as to circumvent the intent of Public Law 97-66.

Basically, the new guidelines would eliminate the requirement that the VA and other agencies conduct cost comparison studies. Like Mr. Montgomery, we were prepared to say prior to this newest development that perhaps there were areas where the VA could save tax dollars by contracting minor services. It appears to us, however, that OMB isn't much interested in how contracting af-

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fects VA services, particularly health care, but is more interested in eliminating the number of Federal employees at any cost.

We agree with the statement made by Mr. Hillis earlier, that often contracting out amounts to no more than a way to make the budget—in this case, the VA's—appear lower, and often results in the Government incurring even greater expenses.

For the very same reasons that we were opposed to the contracting out under A-76 last year, we remain opposed to the latest attempt by OMB to circumvent the intent of Congress and Public Law 97-66. As you know, Mr. Mottl has introduced a bill, H.R. 4851, to exempt DM&S. We favor its enactment. Perhaps the time has come to do just this and extend the provision as recommended by the American Federation of Government Employees to all segments of the VA.

One final note, Mr. Chairman. Contracting out results in less employees. The last time we looked, in 1978, when we were considering veterans' preference, some 48 percent of Federal employees were veterans. We are not in favor of creating more unemployed veterans.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Joeckel appears at p. 46.]

Mr. HALL. Thank you very much.

We feel very strongly about this, as you do, and as you say, we have gone through this once before. We will try to continue the position that this committee has taken, opposition to this circular. We appreciate very much your being with us today.

Mr. JOECKEL. Thank you, Mr. Hall.

Mr. HALL. Our next witness is Mr. Donald Schwab, director, national legislative service, Veterans of Foreign Wars.

STATEMENT OF DONALD H. SCHWAB, DIRECTOR, NATIONAL LEGISLATIVE SERVICE, VETERANS OF FOREIGN WARS OF THE UNITED STATES

Mr. SCHWAB. Thank you, Mr. Chairman. And as requested, I will summarize my statement with the knowledge it will be published in full in the report of this hearing.

Mr. Chairman, the Veterans of Foreign Wars has testified before this subcommittee and the full committee before on contracting out, and our position remains unchanged. We oppose contracting out, period, anywhere within the Veterans' Administration.

We are delighted that the chairman of the Subcommittee on Hospitals and Health Care, the Honorable Ronald M. Mottl, has introduced H.R. 4851 to exempt DM&S from any contracting out, and we support this bill and its early passage wholeheartedly since maintaining the integrity of the VA hospital and health care system is our No. 1 priority in the VFW.

I think the prior witnesses have outlined the dangers of the proposed revision of OMB Circular A-76. It would allow mass contracting out of almost any activity within the Federal Government, and as pointed out previously, would destroy the Federal civil service and veterans' preference and jobs for veterans.

That ends my summary, Mr. Chairman, and I will be happy to respond to any questions you may have.

[The prepared statement of Mr. Schwab appears on p. 47.]

Mr. HALL. Thank you.

I notice on page 4 of your statement that on March 21, 1980, the general counsel of the Veterans' Administration ruled that, in light of the specific statutory structure, the functions of the Department of Medicine and Surgery as set forth in title 38—and I'm quoting—"The application of A-76 to the basic medical care operations of the D.M. & S. cannot be justified legally."

Mr. SCHWAB. Yes, sir, that's correct.

Mr. HALL. I assume that they still have that same position today.

Mr. SCHWAB. I am not sure that they do, Mr. Chairman. I believe that was a different general counsel at the Veterans' Administration at that time, and a different administration.

Mr. HALL. Do you know whether or not any effort has been made with the present general counsel to obtain a position on this matter?

Mr. SCHWAB. No, sir, I do not.

Mr. HALL. Does anyone on the staff know, who might comment on that?

Mr. MCDONELL. Mr. Chairman, yes, there has been a revision made to that definition. It was provided by Dr. Donald Custis, the Chief Medical Director of the VA, to the Senate Veterans' Affairs Committee last November.

We will have that made a part of the record when you receive the letter that has been made by the Administrator in response to the chairman's questions on this circular.

Mr. HALL. Thank you very much. We appreciate your testimony and it will be made a part of this record.

Mr. SCHWAB. Thank you, Mr. Chairman.

Mr. HALL. Our last witness is Mr. Gabriel Brinsky, national service and legislative director of AMVETS.

STATEMENT OF GABRIEL P. BRINSKY, NATIONAL SERVICE AND LEGISLATIVE DIRECTOR, AMVETS

Mr. BRINSKY. Thank you, Mr. Chairman.

My statement will be very brief. My presence here this morning is primarily to emphasize the very deep concern that we have about the proposed revision of A-76. We, too, like the other organizations, have previously appeared before you in opposition to A-76.

We continue to be of the opinion that the matter of contracting out should be a managerial decision based on the local conditions and needs of the activity.

The Veterans' Administration has authority to contract out. The Department of Medicine and Surgery has, in fact, been augmenting the amount expended through contract services. In fiscal year 1980 alone, almost half of the funds, some $622 million, expended for maintenance, repair and operation of VA health care facilities, was expended through contract services.

As we understand it, under the General Counsel's opinion, if it has not been amended, it provides that hands on services is not subject to the provisions of A-76. If this be so, then eliminating those activities or functions would leave approximately 21 activi-

ties which could conceivably be covered by the proposed revision of the circular.

We believe it is time for legislation, as reflected by H.R. 4851, introduced in the first session, which would exempt the Department of Medicine and Surgery from directives like those under consideration.

This, Mr. Chairman, concludes my statement. Thank you.

[The prepared statement of Mr. Brinsky appears on p. 49.]

Mr. HALL. Thank you, Mr. Brinsky, your statement will be made a part of this record.

Mr. BRINSKY. Thank you.

Mr. HALL. Before concluding the subcommittee, I would like to enter into the record the following statement: On March 23, John Paul Hammerschmidt and the chairman wrote to the Administrator requesting information on the proposed revision to OMB Circular A-76. On April 20, both of the gentlemen received their response to that letter.

At this time I would like to enter into the record the letter to the Administrator and his detailed response, which includes an enclosure with the Chief Medical Director's new definition of the general term "complete medical and hospital services" which defines those indirect patient services which may come under OMB Circular A-76.

[The information appears on p. 69.]

Mr. HALL. I thank all of you for your presence this morning. With this, the subcommittee is adjourned.

[Whereupon, at 10:23 a.m., the subcommittee was adjourned.]

APPENDIX

PREPARED STATEMENT OF CHAIRMAN MONTGOMERY

We are meeting this morning to continue oversight hearings on the Veterans' Administration implementation of Office of Management and Budget Circular A-76, "Policies for Acquiring Commercial or Industrial Products and Services Needed by the Government."

As you know, previous hearings on OMB Circular A-76 resulted in the enactment of Public Law 97-66, which contains language forbidding the use of funds appropriated for VA medical care accounts to conduct cost comparison studies required by the circular. Since the enactment of Public Law 97-66, the VA has suspended cost comparison studies in the Department of Medicine and Surgery which were required by the circular.

We are concerned today, however, with IMB's draft proposal to change the circular to make contracting out much simpler and disregard costs. I would like to note for the record at this time that we invited Mr. Donald Sowle, Administrator of the Office of Federal Procurement Policy of the Office of Management and Budget, to provide the subcommittee with the reasons for the proposed revisions to OMB Circular A-76. I am deeply sorry that he has decided that he would not appear before us today. If there is no objection, I would like to insert in the hearing record a copy of his letter advising us that he will not be here this morning.[1] The purpose of requesting Mr. Sowle's appearance before the subcommittee today was to provide an open forum, such as this committee provided in hearings and markups on legislation, for an exchange of ideas between the VA, this committee and OMB before any final decision is made on the proposed revisions to Circular A-76. OMB has also refused to permit the Veterans' Administration to submit prepared comments on the proposed revisions. The VA will not be able to advise us what impact these proposed revisions would have upon the delivery of quality health care and services, and will only be able to respond to questions posed by members of the subcommittee.

This subcommittee, and indeed, the full Committee on Veterans' Affairs, has been very concerned with the possible undesirable effects that contracting out under Circular A-76 may have on the quality of health care delivered in VA hospitals. To ensure that funds were not siphoned away from the medical care and medical research budgets to pay for A-76 cost comparison studies, estimated at $29 million, we enacted Public Law 97-66. It is my understanding that Mr. Sowle formed a task force composed of representatives of the various departments and agencies of the executive branch to draft revisions to both the basic A-76 circular, as well as its cost comparison handbook. The committee has reviewed a draft copy of the proposed revisions, and is very concerned that the draft includes several proposals which appear to be designed to circumvent the intent of law as prescribed in Public Law 97-66, section 601(B)5.

Among the changes contemplated by OMB are proposals to no longer require cost comparison studies be made for those activities with less than 26 employees, and raising the present $100,000 threshold that triggers the need for cost comparison studies. Another proposed revision would change the current computation of the total cost to the Government of a Federal employee's retirement from the present 20.4 percent to perhaps as high as 37 percent. Still another proposed revision would eliminate the present 10 percent differential which is added to the cost of any private sector bid when comparing the cost to doing the work in-house. It appears to me that these revisions to the circular, which totally ignore the cost comparison process, constitute an irresponsible action by OMB is not requiring a determination to establish the cost effectiveness of conversion to contract for certain services.

If the purpose of Circular A-76 is not designed to provide services at the least cost to the taxpayer, it must be concluded that its sole purpose is to artifically reduce

[1] See p. 34.

Federal personnel cost by firing Government workers and paying a private contractor to do the job of the RIFed employees. If this is the case, certainly this committee, and the Congress, should look colsely into the matter and perhaps consider legislation which would ensure that contracting out would be done only when it would result in an improved, truly cost efficient service.

It would be of great assistance to us if Mr. Sowle or an OMB representative was here this morning to provide us with their explanation of their very radical proposals made in this draft proposal. Certainly, a detailed explanation of the philosophy behind the changes would, perhaps, gives us the intent of OMB in changing their procedures to the apparent advantage of conversion to contract for commercial services. Without their help, we will have to develop our own legislative remedy to correct this unsatisfactory proposal.

These proposed changes greatly trouble me, because it appears that OMB is intent on replacing Federal empolyees at any price. Public Law 97-66 does not prohibit the VA from conducting the cost comparison studies required by OMB Circular A-76. It only requires that the funding necessary for the studies come from a separate appropriation and not from the medical care budget. the VA, in its budget for fiscal year 1983, has requested $2 million to conduct A-76 studies. Whether that request will be finally be approved remains to be seen. However, we do not believe that the VA, or any agency of the executive branch, should rush into contracting out blindly by adhering to these new OMB proposals. The cost effectiveness of contracting out cannot be proven by these proposed changes, and the loss of 35,000 dedicated VA employees is too high a price to pay for OMB's "blinders on" approach. If there is no objection, I would like to include a copy of OMB's proposed revision to Circular A-76 in the hearing record.

Our first witness this morning will be Mr. Clyde Cook, the VA Deputy Administrator for Procurement and Supply. Mr. Cook is accompanied by Miss Marjorie R. Quandt, Assistant Chief Medical Director for Administration; and Mr. Frank Sato, Inspector General. We are particularly interested in the Inspector General's role as it pertains to the circular, and we will be directing some questions to him on the subject.

Following Mr. Cook will be representatives of three Federal employee groups. Mr. Kenneth Blaylock will be testifying for the American Federation of Government Employees. Mr. James Peirce, President of the National Federation of Federal Employees, will present the views of his organization. Mr. Bun B. Bray will testify for the Federal Managers Association.

Representatives of the veterans organizations will also testify this morning. Mr. Charles E. Joeckel will testify for the Disabled American Veterans. Mr. Donald H. Schwab, Director of the National Legislative Service of the Veterans of Foreign Wars, will present the views of his organization; followed by Mr. Gabriel Brinsky, National Service and Legislative Director of AMVETS. The American Legion will submit a statement for inclusion in the hearing record.

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, D.C. April 26, 1982.

Hon. G. V. (SONNY) MONTGOMERY,
Chairman, Subcommittee on Oversight and Investigations,
Committee on Verterans' Affairs, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your April 2, 1982 letter to Mr. Stockman, Director of the Office of Management and Budget, requesting Mr. Sowle, Administrator of the Office of Federal Procurement Policy to appear at your Subcommittee's hearings being schduled for April 27, 1982.

For the following reasons, we request Mr. Sowle's appearance be postponed:

Mr. Sowle is currently committed to appear before a House Appropriations Subcommittee on the morning of April 27.

The Interagency Task Group which is revising OMB Circular No. A-76 and the Cost Comparison Handbook has not completed its efforts. The proposed revisions should be available for public comment by the first of May. The drafts referred to in your letter were for informal working group comments only.

Mr. Sowle would be pleased to appear before your Subcommittee after the proposed revisions are published for comment in the Federal Register.

Sincerely,

JONNA LYNNE CULLEN,
Assistant Director for Legislative Affairs.

PREPARED STATEMENT OF KENNETH T. BLAYLOCK, NATIONAL PRESIDENT, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES

The American Federation of Government Employees (AFL–CIO) is pleased to have this opportunity to appear and testify before the House Veterans' Affairs Subcommittee on Oversight and Investigations. Included among the 700,000 personnel throughout the Executive Branch of Government who have selected AFGE as their exclusive representative are some 110,000 employees in the Veterans Administration.

We welcome the continuing oversight by this Committee of the problems which contracting out has already caused the VA and the increased problems which OMB's determination to expand contracting out will inflict on a VA system that faces increasing budgetary pressures. We commend the members of the House Committee, led by the distinguished Chariman from Mississippi, for their action on the 1981 Veterans' Compensation Amendments, Public Law 97–66.

In July, 1981 testimony before this Subcommittee, we testified on the general problems caused by contracting out. In October we testified before the full Committee on the inherent bias in favor of contracting out that has marked both the content and the implementation of OMB Circular A–76.

We do not intent to "retake this ground" today. Rather we would like to focus our testimony on three areas: (1) Recent actions by OMB which will even more prejudice the system against the performance of essential services by Government employees, (2) the refusal of VA management to negotiate with AFGE over restrictions which we have sought on the contracting out of essential services to veterans, and (3) various possibilities for legislative action, including H.R. 4851 and a moratorium on contracting out in the VA. Finally, we would like to look at some other experiences in contracting out various hospital services.

In our testimony today, we would like to draw the Subcommittee's attention to recent actions by the Office of Management and Budget's Office of Federal Procurement Policy (OFPP) in proposing changes in OMB Circular A–76 and the Cost Comparison Handbook and in presenting model legislation on the Government's contracting out. The proposed changes will bias contracting out decisions even more in favor of conversion to performance by private contractors that has been the case under the already biased version of the Circular and the Handbook. The changes proposed by OFPP also threaten to circumvent the Committee's action last year on Public Law 97–66 in prohibiting the use of scarce medical funds to pay for contracting-out cost studies. (Office of Management and Budget Director David Stockman outlined the proposed changes in his October 28, 1982 statement before the Joint Economic Committee. On January 27, 1982, OFPP Administrator Donald E. Sowle distributed the statement as the basis for OFPP's intention to make a "major revision" of Circular A–76 and the Cost Comparison Handbook. In addition, OMB has already implemented certain changes in both the Circular and the Handbook.)

As revised in 1979, OMB Circular A–76 and the Cost Comparison Handbook contain a built-in bias in favor of contracting out. This bias spurs contracting out of the workforce regardless of increased costs to the taxpayer, of decreased control by Government managers, or how inherently Governmental are the functions to be contracted out. In some cases, the Circular and the Handbook are written in ways to mask the bias, but their implementation established this bias long ago. Since our October statement focused on this bias, we will not elaborate further.

We would like to draw the Subcommittee's attention to three of the changes proposed by OFPP that will make it even more difficult to have a fair comparison of the cost of in-house performance to that by private contractors.

OFPP proposes to require that all "new starts," unless they are so-called inherently governmental functions, will be performed by outside contractors. With this change, OFPP has dropped any pretense that it intends that cost-effectiveness should govern the decision on whether to contract out. Instead, any new start which does not meet some unspecified test of being "inherently governmental" will automatically, and unthinkingly, be assigned to outside contractors. Even under the biased A–76 procedure, the unfair cost comparison demonstrated that many government functions can be performed more efficiently by government employees. The

present A–76 procedure for new start costing, while not treating the in-house option fairly, nonetheless at least gives the decision-maker some opportunity to choose the most cost-effective means of providing the service. The proposed change will eliminate this flexibility.

In proposing this change, OFPP drops all pretense that it wants genuine competition in costs to play a role in contracting out decisions. At AFGE, we believe that dedicated VA employees can perform the work more efficiently—if they're given a fair chance. These employees work, day-after-day, for the veteran and the public. They don't need to turn a profit or pay a dividend, while the outside contractors are obviously in their business primarily for profit. OFPP's proposed change on "new starts" will guarantee the contractor's profits—but at a cost in quality of care to the veteran and in money to the taxpayer.

The cost to the taxpayer increases because, in practice, once a function is contracted out, no further comparison with in-house costs are made. Thus a contractor is free to escalate his costs without fear that the function will be returned to performance by Government employees. Once a function is contracted out, the only concern the contractor has is that he not be underbid by another contractor. Frankly, we would guess that there is a lot of contractor-to-contractor communication that makes underbidding less likely to happen. Once again, the ultimate loser in VA is the veteran and the taxpayer.

In addition, the change on new starts compounds the current problems caused by A–76's failure to provide a usable and comprehensive definition of what is inherently governmental. At a minimum, services related to national defense and international security should be "inherently governmental." Before the attempt by OMB to force the VA to implement A–76, we would have thought that medical and hospital care for veterans of our armed services, many of them suffering injuries sustained in the defense of their country, would have been a prime example of an "inherently governmental" function. Veterans care and benefits ought to be seen as just another essential component of our national defense.

Obviously, OFPP sees a much different limit on that definition and, consequently, the proposal to force all new starts to be contracted out will result in massive, new, costly, and disruptive contracting out. This contracting out will also prevent agencies from retaining the core capability necessary to carry out the functions in an emergency and to assess the contractor's performance and costs.

Most importantly, this change undercuts the Committee's action last year in prohibiting medical funds from being used to pay for cost studies. Now no cost studies are needed for contracting new starts. Thus, the Committee goal of limiting contracting out will be undercut.

A second proposed change is to increase five-fold the $100,000 threshold for requiring cost comparisons. In addition, contracts under one million dollars would have the cost comparison process "streamlined" in some unspecified way. We can predict, however, that the streamlining will be designed to increase contracting out. And, once contracted out, we predict the function will stay contracted out regardless of cost.

Even the current threshold for cost studies is bad enough if the real concern is for cost effectiveness. Cost studies of small activities are not particularly complex. Without such studies, the taxpayers are denied assurance that they are getting the most for their money when functions are contracted out. Raising the threshold would forego taxpayer protection in favor of subsidizing companies whose only reason for existing (in many cases) is to make a profit while doing public work at the taxpayers' expense. Again, OFPP's proposed changes are an "end run" against the Committee's prohibition on funding cost comparisons. Now, for activities under $500,000, cost comparisons are not required, and the effect of the funding prohibition has been destroyed for these activities.

OFPP proposes to increase the factor of the cost comparison based on Federal retirement programs. One OFPP official suggested that the current 20.4 percent add-on to the cost on in-house performance as a figure for retirement costs (including the so-called "unfunded liability") be increased to 37 percent. These figures, of course, increase the likelihood that any cost comparison will be weighted in the contractor's favor. The increase reflects the bias in favor of contracting out. In fact, the 20.4 percent figure is sheer guesswork; OMB has never established its validity. It is more than three times the figure (7 percent) used in earlier versions of A–76.

OMB's proposal to raise its arbitrary add-on for retirement costs is even more outrageous in light of the fact that it ignores significant changes in the actual practice of civilian pay and retirement annuities from the assumptions apparently involved in their so-called "dynamic model." Year after year, civilian pay has been capped below the level of increase required to maintain comparability with the private

sector. One result of the unfair 4.8 percent paycap last year, for example, is that the civil service annuities will also be lower because they are based on pay. Thus, the series of paycaps in recent years mandates a lowering of the retirement add-on, not OMB's arbitrary increase. Similarly, the elimination of the twice-a-year cost of living adjustment also warrants a lowering of the estimate for retirement costs.

OMB has never required that the unfunded liability of the Social Security system, which covers contract employees, be added to the contractor's cost. Nor does A-76 impose any estimate of the eventual welfare costs to the government when contract employees, whose employer provided no pension plan, are finally forced by age or health to stop working and then—because they have no pension plan—rely on food stamps, medicaid, Supplemental Security Income (SSI), and other governments benefits.

This is an excellent example of how biased A-76 is in favor of contracting out. Although guesswork, the 20.4 percent figure for in-house retirement costs is in theory based on the total, "dynamic" cost the government of the civil service retirement system. This in effect forces the in-house cost estimate to include thirty-years' worth of civil service retirement costs while the contractor's cost estimate is based solely on his outlays for the period of the contract. This again demonstrates the necessity of having permanent legislation governing contracting out in VA. That legislation should require that any cost comparisons be based on the same period of time for both in-house and contractor performance.

In my contacts around the country with numerous military officials at the operational level, I have discovered consistent criticism of the CHAMPUS Program since it has started relying on outside contractors for providing medical care to military personnel and their dependents. The information I heard about the deteriorating quality of care is truly appalling and I hope that the members of this Committee, some of who are also on Armed Services, will not let the CHAMPUS experience be duplicated in the VA system.

In its push to expand contracting out, however, OMB is not relying solely on changes in its Circular A-76 and the Cost Comparison Handbook. MOB's Office of Federal Procurement Policy has proposed model legislation governing the letting of government contracts, including those for services. This legislation would place in law many of the biases in favor of contracting out already evident in A-76.

OMB's legislation constitutes nothing less than an outright assault on the merit system which has given the American people a career civil service of dedicated, hard-working, Federal employees. OMB's legislation, and its efforts to push contracting out without legislation, constitute a return to the "spoils system," where a primary use of taxpayer's money is to reward political contributions.

We all know that the private contractos loaded up the campaign coffers in the 1980 election. We strongly believe that the push to contract out—despite cost-effectiveness and despite all the documented, harmful effects of contracting are an attempt to reward the private contractors for their political contributions. Many of these contractors exist solely to make a profit while doing government work at the taxpayers expense. In effect, the taxpayers are being asked to subsidize both the outside contractors profit and their campaign contributions. This new "spoils system" threatens the quality of care and the level of benefits for veterans of America's armed forces. For us at AFGE, the choice is clear. Veterans come first.

Of even more interest are two provisions of OMB's legislation that would significantly undercut both the ability of VA management to control their own agency and the actions of this Committee in ensuring that care and service to Veterans is not disrupted by OMB-dictated contracting out.

OMB's model legislation would establish a "contracting out czar," called the Administrator of Federal Procurement Policy, who would be given sweeping new powers under the legislation.

Section 301(c) of the OMB proposal, would require the Veterans Administration, for example to "make its services, personnel and facilities available" to the new czar "to the greatest practicable extent for the performance of functions under this Act." This section would allow the contracting out czar to require that VA management detail its managers to implement contracting out regardless of higher priorities VA itself places on other functions for those managers.

Section 304 of the OMB legislation would in effect give the contracting out czar the power to issue regulations and directives on contracting out and then require that any VA regulations would have to comply with those of the contracting out czar. The only appeal permitted by the legislation would be to the Director of the Office of Management and Budget, whose views on the VA system are well known and well documented.

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In addition, the legislation would expressly interfere with this Committee's right to enact legislation governing how the Veterans Administration approaches contracting out care and services to veterans. Section 303(c) would provide:

"The authority of an executive agency *under any other law* to prescribe policies, standards, regulations, procedures, and forms for procurement *is subject to the authority conferred in this Act.*" (Emphasis supplied.) This section could negate the action Congress took last session in the 1981 Compensation Amendments (Public Law 97-66).

OMB's proposed legislation would also limit the committee's right to adopt future legislation governing contracting out in the Veterans Administration. Section 402 of OMB's legislation would provide:

"No law enacted after the date of enactment of this Act, including *any limitation in any appropriation bill or any limitation of any provisions authorizing the appropriation of funds,* may be held, considered, or construed as amending any provision of this Act, unless such law does so by specifically and explicitly amending or superseding a specific and separately referenced provision of this Act."

We believe that OMB's eagerness to obtain this legislative authority—despite all the documented problems caused by contracting out—demonstrates the urgency in this Committee's establishing precise statutory safeguards for the VA.

We would now like to turn to AFGE's efforts during collective bargaining to reach agreement with VA management on restrictions governing contracting out. In October of 1980, AFGE proposed an article for its general collective bargaining agreement with VA that would have required VA management to give appropriate notice and opportunity for comments before implementing statements of work for contracting out. It is the statement of work, for example, that governs what quality of care—or lack of care—would be provided by an outside employee. We also sought to ensure that contracting out would be done only when it would in fact result in a more efficient performance of the same job.

Unfortunately, VA management refused to agree to our proposals. In fact, until the Committee's action in Public Law 97-66, VA management was going ahead with implementing OMB Circular A-76 despite their failure to reach agreement with us on that implementation.

In view of the pro-contracting out attitude which VA managers have shown AFGE at the bargaining table, we did not even propose that there be a moratorium on contracting out in the Veterans Administration. I want to assure the Committee that we would be happy to agree to such a moratorium at any time. Even now, it is not too late to agree on a contracting out moratorium. Moreover, my lawyers tell me that such a moratorium agreement would give VA powerful protection against the on-going and escalating pressure they are receiving from David Stockman and his cohorts at OMB.

In view of the unprecedented emphasis which OMB is putting on the contracting out of Government work and the replacement of experienced, dedicated Federal employees—many of whom are veterans—by private contractors, we recommend that the Committee seek comprehensive legislation governing contracting out in VA. As we pointed out, OMB's legislative proposal suggests that the "launch window" for such a statute on VA contracting out may be ending. If OMB should be successful in selling its proposed legislation to the Congress, then any future efforts by this Committee to preserve veterans care and services from the ravages of contracting out will be more difficult. AFGE would be pleased to work with the Committee on drafting a comprehensive amendment to Title 38 that would be govern contracting out both under OMB Circular A-76 and Title 38 itself.

During the October 1981 hearings, VA testified that it already contracted out approximately $700 million dollars worth of work. Frankly, AFGE does not quarrel with much of this contracting out because it involves the securing of scarce resources not otherwise available in-house. Much of the contracting out, however, does not fall into this "special skills" category. Instead it involves the hiring of outside contractors to do work that could more readily, more efficiently, and with more control by management, be performed by in-house personnel.

The October hearing record is filled with the vivid descriptions, by both VA management and employees, of the disastrous effects this contracting out has had on patient care—outside workmen, for example, doing construction work on the patient wards without concern about keeping those wards free from dust and infection.

We believe that the Committee should adopt statutory standards governing this contracting out under Title 38 authority as well as limiting OMB's effort to impose A-76.

We welcome the introduction of H.R. 4851 by Representative Mottl of Ohio. That bill would exempt the Division of Medicine and Surgery from OMB directives on

contracting out. We believe, however, that simply taking this step would not achieve the protection for veterans care and service which the Committee intended in Public Law 97-66.

There should be adequate statutory standards on contracting out for all of VA, not just DM&S. Moreover, the absence of statutory standards allows (even if H.R. 4851 were adopted) OMB to use a "backdoor" approach in pressuring VA managers to use their Title 38 to contract out without reference to A-76. Cost studies (however limited and biased), are a part of the A-76 procedure—not the Title 38 authority. Thus, exempting DM&S from A-76 could have the ironic and unintended effect of speeding up contracting out in DM&S without cost studies. It might thereby allow OMB and certain VA managers to circumvent the limitation of Public Law 97-66.

In addition to specific statutory standards, we would like to see a moratorium on all contracting out in VA. The Armed Services Committee has just recommended such a moratorium in the Department of Defense, and we believe such an approach should also be adopted for the Veterans' Administration.

A lesson should be learned from the contracting of health services in other agencies. There is no question that the quality of the staff suffers drastically when the motivation shifts from providing services to maximizing profits. When Comprehensive Health Services, Inc., moved into the Employee Health Service of the Department of Commerce in Washington, 13 career-oriented, highly experienced nurses were lost. Of course, they were offered positions with the contractor but at a salary level at $6,000 below their current level; none accepted the jobs. In fact, the salary scale of the contractor would only be attractive to persons just graduating from nursing school. The specialized training the government-employed nurses had to offer, particularly in the field of preventive medicine and hypertension screening, is lost to that agency.

It is reported by employees at NIH that the average tenure of its contractor employed nurses appears to be less than 1 year.

If conditions such as these were allowed in any sector of the VA, the results could be catastrophic. The primary way a contractor prevails in a cost comparison is by paying low wages. It is not realistic to assume that the experience attained by VA's medical staff can be retained or substituted by a contractor; A-76 policy does not allow the type of contract that can specify staffing requirements except in broad and general terms. (If it did, no contractor could under bid the cost of the in-house activity.) The contractor may have the nurses on the floor but instead of 10 or 20 years of experience, the nurses will have just received a license. Simple arithmetic dictates this result.

Our veterans deserve the special skills and dedication of a medical staff whose first loyalty is to the Administration and its patients, not to a contractor and its profits.

In addition, the loss of the direct chain of supervision and its detrimental results that are being seen in other agencies will befall the VA as well. Military installation commanders are losing control of their engineering, logistics, maintenance, and industrial operations activities since all commands, directives, and cure orders must be funneled laboriously through the contracting officer's representative. Similarly, the VA's hospital administrator potentially would lose direct touch with the nursing supervisor, dietician, staff physicians, housekeeping, etc.; all substantive communications must be routed through the contracting officer to the contractor's representative.

To take the substantial risk of allowing the contracting of VA health services in the name of cost effectiveness is certainly a poor decision when considering the fact that the cost comparison process is highly suspect. The results of a cost study are artificial, arbitrary, and biased in favor of the contractor. Furthermore, the only definitive study on the results of contracting-out indicates that in the long run it is more costly than in-house performance (a study covering 5 years by the U.S. Army TRADDOC, completed in January, 1979.)

If it is merely a personnel numbers game the administration if playing, so be it; it should be justified to the American people on that basis; but certainly not couched in terms of governmental efficiency.

Obviously, VA ought not be forced to follow the bad examples in other agencies.

AFGE is not opposed to cost-effective contracting out (except, of course, for inherently governmental functions which require government control and accountability). A fair comparison of costs in-house (unlike the A-76 procedure), can be a powerful tool for making the Federal government more efficient. At AFGE we are committed, by our constitution and in practice, to making government more efficient. Too often, government agencies developed an overly centralized structure with layer after layer of management bureaucracy. This "pyramiding" bureaucracy often imposes

unproductive costs on the employees and the managers at the operational level. AFGE strongly supports giving operational managers the flexibility to get the job done, even in emergency or surge situations without the need to clear everything with the regional office and VA Central.

There are only two types of service contracts: fixed-cost or cost-plus. Both of them have problems compared to in-house performance. A fixed-cost contract is based on the contractor's estimate that it will take only so many man-years to meet the (often imprecise and understated) contract specifications. When there is an emergency or a work-load surge, the contractor does not have the capability the in-house manager has to increase resources, because any increase comes out of the contractors profits. On the other hand, even more problems exist with the cost-plus contract because it is basically a license to make a profit regardless of how inefficient the contractor is.

When a fair cost-comparison with in-house performance results in a lower bid by the contractor, the contractor is saving money in either of two ways. He has either reduced overhead costs, or he has reduced personnel wages and benefits. Any reduction in overhead costs which the contractor can make ought be done by the government in reducing its own overhead costs. This principle is reflected in the Armed Services legislation requiring that in-house cost estimates are based on the most cost-effective organization of the agency. The government should not saddle its operational personnel with inflated overhead.

When contractor has lowered personnel wages and benefits, the contractor is likely to attract a less experienced and more transient workforce. Lower wages and benefits also increase the likelihood that contractor employees will strike in order to get fair compensation for their work.

The Federal government has told Federal employees that their work is "too essential" for them to be able to bargain over pay or to strike. But when the government turns around and tells those employees that their work is not too essential for it to be contracted out, those employees will, understandably and out of anger, and in anger at losing the current jobs they performed so well, use all the means available to get what they've been denied.

AFGE is proud of the work its members in the VA system perform. And we are proud of their unswerving dedication to the veterans of America. We don't tell Federal employees to strike. But I want to be very candid about what will happen if Federal employees are forced to become contractor employees. Just like other unions, AFGE will represent contractor employees to the fullest and if we cannot obtain our fair economic demands, we will strike if necessary.

STATEMENT BY DANIEL J. KEARNEY, FIRST DISTRCIT, NEW ENGLAND, NATIONAL VICE PRESIDENT, AND DOROTHY DEDMOND, PRESIDENT, AFGE LOCAL 1674, VAMC, WEST HAVEN, CONN., PETER HODGSON, PRESIDENT, AFGE LOCAL 2610, VAMC, TOGUS, MAINE, IRA STODDARD, STEWARD, AFGE LOCAL 2610, VAMC, TOGUS, MAINE, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

Your committee is to be congratulated since it is the champion of some 30 million American men and women who are veterans. Your watchfulness last year when the Department of Medicine and Surgery had set aside 25 million dollars to study contracting-out is admirable. That money was sorely needed to provide medical services for the millions of veterans who have that entitlement. And now, OMB, which constantly re-writes its regulations, is back in trying to contract out services of units under 25 persons performing a function in the VA. Again, they would destroy the cohesiveness of the services in a VA Hospital which contribute to top notch medical care for veterans. I know this committee will be told by OMB that needed services can be provided more cheaply by outside contractors. Their reasoning is being supported by billion dollar corporations who are so anxious to do business with the Government. Are they successful in providing services in a hospital?

Let's look at some facts.

1. I surveyed 10 major hospitals in the Boston area and found that none of them are contracting out any of their major services. Nor do they intend to fall victim to the siren call of the many entrepreneurs who are lined up and alleging that the care that they will provide is as good or better and less expensive than the inhouse services the hospital now provides.

2. The American Federation of State, County, Municipal Employees Union, an affiliate of AFL-CIO, represents 15 state and county hospitals in Massachusetts and we are told that none of the hospital functions are contracted out.

3. Hospital Magazine which is the house organ of the American Hospital Association, conducted a survey among their members and found some of the reasons for termination of contractors services were:

(a) "Administrators' comments about the cost-effectiveness of the contract services included: It was not cost effective. The actual cleaning job was one of the key things. It just wasn't being done. And, we felt that by eliminating the contractor we could decrease our costs by cutting out their management fee."

(b) "One administrator expressed the lack of accountability this way. The hospital wasn't very clean. We had a lot of trouble and many patients complained. In addition, we didn't receive an effective response from the company when we would notify them of difficulties or problems."

(c) "Another respondent mentioned trouble over the contract agreement. We had escalating costs in the contract that began to jump dramatically. We had a construction project going on, and as the contractor began to take over the responsibility of the new square footage, the contract was changed several times. We felt the changes were a little bit more than they were worth."

(d) "The main reasons cited by respondents for giving companies lower overall performance ratings were the dissatisfaction of other hospital departments with the contractor housekeeping services and the administrator's feelings that the hospital was losing control over the housekeeping department. Other factors that contributed to low performance ratings were the failure to save money as predicted, dissatisfaction with the assigned director of housekeeping, and the feeling that the personnel who were hired by the contract company did not live up to the standards expected by the hospital."

Please note in item (d) above where it says and I quote "lower overall performance ratings were the dissatisfaction of other hospital departments with the contractor housekeeping services". In other words, the hospital must operate as an integrated unit with the rest of those hospital services in order to make the overall patient care function. The OMB proposed change which would eliminate cost studies for those departments under 25 personnel, would affect many services in the direct hands-on care of the patients.

For instance, President Dorothy Dedmond, V.A. Medical Center, West Haven, CT and myself interviewed the Service Chief of Social Services, David Gitelson. We found that there were 22 employees in that service with over 10 years experience devoting their services to the veterans and their families. The social workers are totally integrated with all medical service as a member of the team. The service they provide and the problems they solve for veterans, are different than the requirements of a patient in a general hospital. They must not only be proficient to handle the veteran clinically, but also they must be completely familiar with veterans benefits, their rights and resources. They must also know how to contact community services for assistance to veterans and families where needed. We also found that the social service worker is called on before an operation to work with the veterans and the families as well as after the operation. A social worker in a V.A. Hospital is required to receive on-going training so that he/she may be kept abreast of not only the change in benefits program, but also the latest in medical programs. The theme of the Director during their discussion was their concern for the care on the veterans.

I would like to conclude by asking the question, can a private service provide what is now being provided by the in-house social services division? The answer must be that it is highly doubtful.

In-house Pharmacy—President Patricia Warren, V.A. Medical Center, White River Jct., VT and myself talked to the Chief of Pharmacy, Patrick Faragon. We found that there are 14 employees in that department. About half are pharmacists and the rest technicians. They are responsible for preparing some 800 plus prescriptions daily. About 500 are mail orders to veterans in Western MA, VT and No. NH. The employees have an average service to the VA of over 1[illegible] years. They provide a continuity that cannot be furnished by either contracting in the service or contracting it out. The pharmacists consult with the medical staff, including nurses and doctors. They sometimes are involved with the doctors when they make their rounds throughout the wards and provide valuable advise to the doctor. There is a new system being installed in that unit which is called the "unit dose program". With this program, the workload of the doctors and nurses and other technical will be cut. When the program is instituted, the pharmacist will be on the wards daily. AFGE does not know of any contractor that is equipped to provide the necessary services. Another factor if the pharmacy was contracted, is the cost of materials. The pharmacy at the present time requisitions 1.2 million dollars worth of supplies. Those supplies are furnished through the V.A. Medical System and saves the Gov-

ernment between 20–25 percent in costs as compared to supplies procured by a contractor. In other words, the contractor would have to spend about ½ million more than the VA now spends for the same supplies.

Dental Services—The Dental Services at V.A. Medical Center, West Haven, CT employs 16 people, all of whom are either professional or technical. That service spends 45 percent of its time working directly with in-hospital patients. Further, all patients are examined by a dentist upon their admission. The dentist often works with the medical doctors directly on the patient when there are problems in the patient's mouth. Work that is started on a patient in the hospital may be completed on an out-patient basis after the patient is discharged. 55 percent of the dentist's time is either spent on the aforementioned patient or on patients who are regularly entitled to service in the clinic. This is another department whose services are so dove tailed into the complete care given the veteran patients that could not be replaced by contracting-out.

The above services are among many that could be considered for contracting-out if OMB's proposals were to be affected. Some of the other services are, for instance, radiology, blind center, rehab medicine and anesthesia. It is our hope that the Veterans' Affairs Committee will be able to bring about an exception to the proposed OMB Circular A–76 and keep all of the hospital services intact. Veterans' entitlements to medical care are growing as many of the 12½ million WWII veterans approach and exceed age 65.

I would like to repeat some initial remarks that I made and ask you to look at the records where hospitals have contracted out. I am certain that the situations in the 10 major hospitals that I surveyed in Boston and the State and County Hospitals of MA can be repeated throughout the country as hospital after hospital will tell you of their dissatisfaction with contracting out services and their dismay when they find out that they lose control of the needed functions in their hospital.

In conclusion, every Federal employee is bound by law not to strike. The VA Hospital system has never had any labor disruption in the many years of its existence. In the private sector, there have been many many strikes in hospitals. As a for instance, the Cape Cod Hospital in MA was struck by the nurses, leaving 300 patients without care. Those patients had to be moved by immediate transportation to hospitals as far as 80–100 miles away. If contract employees struck the VA Hospital, White River Jct., VT or Togus, ME VA Hospital, those patients would have to be moved many hundreds of miles away because there is not the density of hospital facilities to handle them close by. Only bigger cities like Boston and New York could absorb them. If those contract men and women exercise their rights and strike, where are savings if you lose patients?

We have found that hospitals, in order to provide "quality" service must work as an integrated unit. Contracting out of selected services would fracture this concept and diminish quality.

STATEMENT BY THE NATIONAL FEDERATION OF FEDERAL EMPLOYEES

Mr. Chairman and Subcommittee Members: The National Federation of Federal Employees is pleased to appear this morning to discuss certain proposed changes to Office of Management and Budget Circular A–76, the policy-setting instrument for contracting out Federal Government operations and services. The issue is of deep concern to our members, including the thousands employed by the Veterans' Administration.

The focus of today's hearing is a draft revision of A–76 which, we must assume, was developed by officials of the Reagan Administration. While the draft has yet to be distributed for public comment, NFFE has obtained a copy and studied it thoroughly. It is a shocking document, reflecting a complete and utter disregard for the public trust, Government efficiency, and the rights of Federal workers. The draft would indeed revise the Government's policies on contracting out. The requirements for cost efficiency, which must, out of concern for the American taxpayer, be the most important factor in decisions to contract out, would be virtually eliminated from the process. The draft is an open invitation to private contractors to compete only among themselves for the chance to rip-off the Federal Government to the tune of billions of dollars. And it comes at the very moment the Reagan Administration, through its misguided economic program, is forcing millions of citizens to endure hardships unprecedented since the Great Depression.

The draft revision would make many changes to current contracting out policy, but certainly the most signficant, and the most onerous, is the new threshold

it proposes for mandating comparisons between in-house and contractor costs for operating commercial and industrial activities (CITAs).

NFFE has long advocated the complete elimination of thresholds for requiring cost comparisons. Proponents of thresholds claim it is impractical and wasteful to conduct cost comparisons for small activities since these functions should be performed by private industry even if the cost is somewhat higher. It is our view, however, that any Government activity, regardless of size, should be performed by the party which can do it correctly for the least amount of money. Transferring activities over to private industry without benefit of cost comparisons is extremely wasteful because (1) in most instances the contractor cost is higher than in-house; and (2) it subjects these activities to the standard contractor pitfalls of shoddy workmanship, "buy-ins," and future cost overruns which the following examples illustrate:

At Corpus Christi Naval Air Station in Texas a contract was awarded to repair base housing for over $800,000, three times the cost at which base employees claim they could do the job. Five months later, after collecting the contract's full value, the contractor defaulted. A second contractor was brought in to finish the job, which consisted to a large extent of repairing the work of the original contractor. Storm doors, for instance, already needed to be replaced less than a year after being installed. The second contractor put in sturdier ones at lower cost than the first contractor. A short time later, the original contractor was awarded a new contract to do work on the base.

Four contractors bid to take over operations of the Hawthorne Army Ammunition Plant in Nevada, the largest arms depot in the United States. The lowest bid was $57 million for three years; $5.2 million less than estimated costs if continued in-house. The General Accounting Office found later that the contractor's labor costs had been understated in the bid by $12 to $15 million and said, "If the contractors' proposed costs had been adjusted upward by the procuring contract officer to be more realistic, the operation of Hawthorne would not have been converted to contractor performance."

In fulfilling specific responsibilities, the contractor:

Produced 10 percent fewer 50mm cartridges than required, at a 178 percent cost overrun; shipped only 58 of 100 missile warheads needed on the east coast by March 31, 1981. By that date the cost overrun was $49,619; was six years behind schedule in the required task of annually surveying all ammo storage locations on base.

Fort Carson, Colorado decided to contract out its grass-cutting operation. The contract for the first year was $30,000. The contract for the second year was $180,000—six times the original cost.

The GAO main building in Washington has a bank of eight elevators on its north side. The elevators are maintained by private contractors. For the past year no more than three elevators have worked at the same time, and usually just two are in operation. The GAO wants to correct the situation but cannot because the contractors work for another agency, the General Services Administration.

A recent study by the General Accounting Office charges that six Federal agencies, including the Veteran's Administration, awarded approximately $11 billion in noncompetitive contracts during 1980. 40 percent of the contracts could have used competitive procedures and reduced Government costs substantially.

NFFE opposed the $100,000 threshold implemented by the Carter Administration. But at least the Carter standard related to cost, the obvious and proper criteria until officials of the Reagan Administration, with their strong bias toward business, looked at contracting out and the potential it held for funneling precious Federal dollars to private contractors.

The proposed threshold contained in the draft revision is beautiful in its simplicity yet potentially devastating in its budgetary impact. Rather than utilizing a certain cost as the cut-off point below which cost comparisons need not be conducted, the draft proposes to use the size of an activity's workforce: "Activities with less than 10 FTEs (full-time equivalent employees) shall be converted to contract performance as soon as practicable," the draft states, "but no later than September 30, 1983, without a cost comparison. Agencies should not include the delay and expense of conducting cost comparisons to justify in-house performance of commercial activities with 10 to 25 FTEs. Such in-house activities should be converted to contract as soon as practicable, but no later than September 30, 1983, without a cost comparison."

The proposed threshold could not have been more favorable to private contractors, and less considerate of the taxpayers, if it had been drafted by the contractors themselves; which, we suspect, may be the case. The size of an activity's workforce bears little, if any, relationship, to the size of its annual budget: 25 employees could manage activities with yearly budgets ranging from $400,000 to $4 million or per-

haps $400 million. But according to the new standard these activities, with few exceptions, would be contracted out—period—regardless of whether Federal workers can perform the work better and at less cost.

Activities with more than 25 FTEs would undergo a cost comparison unless, in the view of the agency head or deputy, "the results of recent cost comparisons of like activities, GAO report audit findings, etc., the in-house operation does not have a reasonable expectation of winning the competition and therefore conduct of a cost comparison would not be necessary."

It is difficult to imagine more vague or nebulous wording being proposed for a Federal regulation. This language, coupled with the 25-employee threshold, is an open invitation to Administration political appointees to arbitrarily turn $20–$30 billion in commercial and industrial activities over to private contractors and the poor quality, "buy-in" bids, and cost overruns that have become commonplace in contract performance.

In Veterans' Administration hospitals, for example, virtually every activity aside from top administrative function and medical treatment would be forcibly contracted out under the new A–76. Pharmaceutical, food and media services, maintenance, medical records processing, storage and distribution, environmental sanitation and keypunching would have to be awarded to private contractors without cost comparisons since almost all these functions have fewer than 25 employees at each hospital. And those with more than 25 workers could be contracted out without a cost study if the hospital administrator or deputy merely has a "hunch" it could be done cheaper by private industry.

Apply the example at VA hosptials government-wide and you begin to understand the potential impact of the draft revisions.

Another insidious provision of the revised A–76 is the stipulation that all "new requirements," those "newly-established need(s) for a Government product or service," be contracted out without a cost comparison. In other words, the draft A–76 would give every new Government commercial and industrial activity to private contractors regardless of cost. One can picture the U.S. Chamber of Commerce, the National Association of Manufacturers, and the Business Roundtable, those organizations currently pressing for a lesser Federal role, suddenly lobbying for greater Government spending knowing a large share of it would end up in their members' coffers. The Defense Department is a perfect illustration of what can happen when private contractors have a large stake in agency appropriations.

The revisions to A–76 contain many objectionable proposals in addition to those already cited. They would, for instance, reduce protections for employees whose jobs have been lost to contract, as well as restrict the appeals process. The current provisions are so weak the changes would be barely noticeable. The point is, however, that at the same time the Administration proposes to accelerate contracting out it would weaken the safeguards for the very employees who would be most harmed.

NFFE is fully aware that the document which precipitated today's hearing was not intended for public distribution. It was, we were told, a draft meant only for internal Administration review and changes can be expected prior to its official release for public comment. Often, though, the comment period is too late to make substantive changes to proposed regulations and, for this reason, we are very grateful to the members of the committee for drawing attention now to the draft and its horrendous provisions. We only hope today's proceedings have a positive influence on the final version because nothing less is at stake than the integrity of the Federal Government.

It is deeply disturbing, however, that a document of this nature was permitted even at the draft stage. Its contents reflect such a total lack of concern for sound, efficient governme[illegible] such an arrogant disregard for the public trust, we believe its authors are not p[illegible]per candidates for public office. We have already asked Mr. Donald Sowle, the Administrator of the Office of Federal Procurement Policy which must take responsibility for the draft, to resign. We hope he accedes to our request and takes with him those associated with the document's creation.

It would not be surprising, of course, if Mr. Sowle and his compatriots remain in office. But if NFFE's action does nothing other than call attention to the seriousness of this issue, it will have served a worthwhile purpose.

That concludes my statement. I will be happy to answer any questions.

PREPARED STATEMENT OF BUN B. BRAY, JR., EXECUTIVE DIRECTOR, FEDERAL MANAGERS' ASSOCIATION

Mr. Chairman and Members of the Oversight and Investigations Subcommittee. My name is Bun B. Bray, Jr., Executive Director of Federal Managers' Association.

The Federal Managers' Association is the Federal Goverment's oldest and largest management group with some 16,000 supervisors/managers in all the principle departments and agencies of the Government.

The Federal Managers' Association certainly congratulates you, Mr. Chairman, and your members for holding public hearings on the Administration's proposed revision of the Office of Management and Budget's Circular A-76, namely, "Policies and Procedures for Acquiring Commercial Products and Services Needed by the Government."

We consider the proposed Circular A-76 a damaging proposal to the Government's personnel management programs and for services and security for the American people. The revised A-76 would result in the Federal Government losing direct control of thousands of employees. It would mean hundreds, maybe thousands, of functions converted to contractor operations without cost comparison. It would be opening the door for increased labor costs to the American tax payer.

Our review of Circular A-76 Revised, points up two major weaknesses. Item 7(e) reads, "This circular will not be used to justify a conversion to contract solely to avoid personnel ceilings or salary limitations. However, when justified under this Circular, agencies shall contract out regardless of the relationship between personnel levels and authorized ceilings."

Here is a fine example of two statements, two sentences, one plus and the other minus. As a result, it would appear to us in FMA that you can contract out if you have personnel ceiling problems. The positive first sentence is negated by the second sentence.

For years we have maintained that OMB has never monitored the continued use of contractor personnel, regardless of cost, to avoid OMB and/or Congressional personnel ceilings. With this proposed change, OMB will no longer even have to consider the avoidance of personnel levels.

Mr. Chairman, we now come to the crux of this Administration's proposal, namely item 9 "Cost Comparisons" (a) "Common Ground Rules" (1) "Thresholds". The first question we must all ask—Is OMB talking about an "activity" or a "function"? That is a key question. However, under either definition, havoc will result.

Assuming OMB meant "activity" as a separate and well identifed Government organizational entity—for examples: a Social Security field office, a Veteran's Affairs field representative office, or a Dept. of Labor Employment Service Office—than how do you react to the operations of such service centers by profit-motivating companies?

Or, let's assume "activity" actually means function. In such case we have a Naval Shipyard—without cost comparisons we must by September 30, 1983 turn over to private companies activities of fewer than 25 full-time employees, presumably legal work, health clinics, training, public realtions, etc. Or, let's take a VA Medical Center—how many different activities would you have operated by indirect labor?

To resort to indirect labor can lead only to confusion, lack of full control and authority and eventual loss of efficiency and economy, much less, reduced care for your patients in the VA Medical Centers.

Mr. Chairman, there has been a growing trend by recent administrations, both Democrats and Republicans, to go contract. Why? Ther are several reasons. One, by contract operations the departments and agencies are able to avoid Congressional and OMB imposed personnel ceilings. FMA has done a rather detailed study of this trend over the past 25 or more years. All too often the cost of going contract was not a factor. The head of the Government field activity had the work. In Defense Department activities there are three sources of labor; Civil Service, Military or Contractor. In non-defense activities you have Civil Service or contractor. And the sad fact is, we have control over only the number of Civil Service personnel.

Personnel ceilings are continuing to be used to fool the American tax payer.

Two, Our Nation is economically strong due to our private enterprise system; the free spirit of entrepreneurship. Thus, the Government does not compete with the private sector. We all subscribe to this concept, but one begins to wonder about entrepreneurship and risk taking when the private company merely recruits labor to work in Government-owned buildings at Government-owned desks and benches with Government-furnished equipment and tools.

There is a profit to be made by the contractor or we would not have the hundreds of private companies clamoring for Government business. It hurts to think we have

a company making a profit by using the cheapest possible labor to operate our VA Medical Center food service, when the work was formerly performed by direct-hire Civil Service personnel paid according to law-of-the-land wages and under the direct control of the manager of the Center.

Three, The cost comparison process under OMB Circular A-76 is often a sham. Faced with arbitrary personnel limits, every means available to the contracting officer is used, including impropriety to insure the review favors the contract. In one instance, a Federal manager's career was stalled because he refused to raise the grades of the audio/visual personnel in order to insure the function would be contracted. All except that one base went contract.

Contractors submit low bids, happily knowing that once the ceiling points are gone, they can raise the price to make up for early losses.

Despite concerted efforts on the part of managers to streamline operation, it often doesn't matter because the outcome of a review is often predetermined. Although A-76 purports to require that savings must be achieved by contracting out, the requirement is totally ignored when personnel ceilings are the bottom line instead of sound management principals.

Then, too, you frequently are working with two different sets of wage rates. The Federal Government in all its wisdom sets the pay of its employees. In turn, the Federal Government allows the private sector to pay still a different wage rate.

Mr. Chairman, we as Federal Managers, are certain that the Government's Civil Service work force is as dedicated, able and cost effective as any work force in our Nation, private sector or state and local governments. Therefore, over the long haul the Government careerist will get the job done as timely, or efficiently, often less costly than the private sector personnel.

The Federal Managers' Association recognizes and accepts the use of contractor personnel and consultants in many instances. This type labor force can and often should be used to level off the peaks and valleys of labor needs. There are onetime requirements for special skills that make it realistically and economically feasible to use outside of Government personnel. Then, too, we cannot support an in-house operation that is considerably more expensive over the long haul, all factors considered, than the use of contractors.

The Association, however, has for years worked for a realistic labor concept which was based on work load and not politics, which provided adequate personnel for the Federal manager to get the jobs performed effectivley, timely and at an acceptable quality level. That is what we are asking today.

Under current OMB contracting plicies the Government is not using the indirect labor force to stabilize our career work force. Every month specific groups of Federal employees are worried about their future as studies are made "to keep work in house of to go contract." Employee morale is as bad today as I have personally witnessed in some 35 years and this threat of being replaced by out-of-Government labor is going to push the morale even lower, it that is possible.

Mr. Chairman, with these points in mind, may I respectfully urge this Committee to take the firm stand again, as it did earlier this year, and veto any proposed OMB cost studies for any services involving patients and also to urge this Congress to require of OMB procurement policies that are realistic, cost effective and that preserve the Federal Government's career Civil Service work force rather than destroy it which the proposed Circular A-76 would eventually do.

In closing, may we all breifly remind ourselves that through Democratic and Republican Administrations the Federal Government's work force has provided the American people the most efficient and effective government in the world. This work force has carried us through wars, economic disasters and Watergate; it put men on the moon and discovered many of the basic scientific revelations of this century.

Mr. Chairman, again I appreciate you holding this hearing on a very important issue, use of our human resources.

If you have any questions, I will attempt to answer them.

I thank you.

STATEMENT OF CHARLES E. JOECKEL, JR., DEPUTY NATIONAL LEGISLATIVE DIRECTOR, DISABLED AMERICAN VETERANS

Mr. Chairman and members of the subcommittee, on behalf of the more than 700,000 members of the Disabled American Veterans, I wish to thank you for this opportunity to discuss, briefly, the proposed revision of the Office of Management and Budget Circular A-76 and H.R. 4851—a bill which proposes to totally exempt

the VA's Department of Medicine and Surgery from contracting to private enterprise the services currently provided by federal employees.

Let me state at the outset, Mr. Chairman, that the DAV views the proposed revision of OMB Circular A-76 as an attempt by the Administration to circumvent the intent of Public Law 97-66—the Veterans Disability Compensation, Housing and Memorial Benefits Amendments of 1981. You may recall that just a few short months ago, the Congress passed, and the President signed into law, legislation which prohibited the use of certain VA health care funds to conduct cost comparison studies required under OMB Circular A-76. The law states that no such studies may be conducted (using VA health care funding) unless funds have been specifically appropriated for that purpose by the Congress.

The proposed revision to OMB Circular A-76 would, without the benefit of cost comparisons, simply require agency officials to contract any commercial or industrial type of activity that is currently provided by less than nine full-time federal employees. The revision further authorizes such contracts to be issued for any future service without a requirement for cost comparison studies.

Mr. Chairman, the DAV opposes this latest attempt by the Office of Management and Budget to contract out to private enterprise the services provided by the Veterans Administration—particularly, the contracting of such services without regard to cost effectiveness or the impact on the quality or services provided to veterans and their families.

As you know, the VA already contracts some $700 million in commercial and industrial activities. These contracts are based upon both cost effectiveness and the fact that the quality of services provided to veterans is not impaired.

In our view, the proposed revision to OMB Circular A-76 amounts to nothing more than "budget gimmickry" since funding for such contracts does not appear in the federal budget—thus, creating the illusion of both declining federal expenditures and fewer federal employees.

For the very same reasons that we were opposed to the contracting out under OMB Circular A-76 last year, we remain opposed to this latest attempt by OMB to circumvent the intent of Congress and Public Law 97-66.

H.R. 4851

Through appropriate amendment of Section 4101 of Title 38, U.S. Code, H.R. 4851 would exempt the VA's Department of Medicine and Surgery from the "policies and directives of the Office and Management and Budget prescribing procedures for standards for contracting commercial and industrial functions of the government. . . ."

As we stated in hearing held last year, the DAV has no objections to contracting out of minor services which do not impact upon the quality of care provided to veteran patients, so long as these contracts are cost effective. However, Mr. Chairman, it appears to us that OMB is less interested in how contracting out affects VA services, particularly health care, and is more interested in eliminating the number of federal employees at any cost.

Because we believe the contracting out of VA health care services would have a direct adverse impact on the health care provided to veterans, we, therefore, favor the enactment of H.R. 4851—and would further recommend that the provisions of the measure be extended to cover all employment within the Veterans Administration.

This concludes my statement, Mr. Chairman, and I wish to thank you and the members of the Subcommittee for allowing us this opportunity to express our views on this very important subject.

STATEMENT OF DONALD H. SCHWAB, DIRECTOR, NATIONAL LEGISLATIVE SERVICE, VETERANS OF FOREIGN WARS OF THE UNITED STATES

Mr. Chairman and members of the subcommittee, thank you for the privilege of appearing before this distinguished Subcommittee to present the views of the Veterans of Foreign Wars of the United States.

My name is Donald H. Schwab and it is my privilege to serve the more than 1.9 million men and women of the Veterans of Foreign Wars as their National Legislative Director.

Mr. Chairman, the Veterans of Foreign Wars has previously testified before both this Subcommittee and the full Committee in opposition to contracting out within the Veterans Administration and our current Resolution No. 622 entitled "Oppose

Contracting of VA Services," passed by the voting delegates to our last National Convention, is appended to my testimony.

In the prior hearings, Mr. Chairman, all witnesses except the President's Office of Management and Budget (OMB) and the Veterans Administration, whose testimony must be cleared by the OMB, opposed contracting out within the Veterans Administration. One of the provisions of Public Law 97-66, now codified in 38 USC 5010, precludes funds appropriated for the Veterans Administration under accounts for Medical Care, Medical and Prosthetic Research and Medical Administration and Miscellaneous Operating Expenses or personnel paid from these funds to be used to carry out any activity in conjunction with cost comparison studies of contracting out unless funds are specifically appropriated for that purpose. When the President signed the enacting legislation which became Public Law 97-66, he stated in part: "The second provision that I find troublesome would effectively preclude the VA from conducting cost comparisons under OMB Circular A-76 to determine that most economical means of performing selected functions within its medical facilities—by contract or by the use of the federal employees in the VA. Over the next few months, my Administration will work with the Congress to allay its concern and to find a mutually agreeable approach to the application of the Circular's provisions to the Va." We now find that the Administration's proposed fiscal year 1983 budget for the VA contains $2 million in the medical care account to conduct cost comparison studies in compliance with OMB Circular A-76.

Mr. Chairman, as pointed out in the full Committee's report to the Budget Committee on March 15, 1982, Committee Print No. 74, compliance with the provisions of the OMB Circular A-76 would cost approximately $29 million and 35,000 VA employees, of whom 64 percent are veterans, their jobs, including those positions specifically set aside for veterans by 5 USC 3310. The VFW agrees wholeheartedly with the recommendation of this Committee that the $2 million in question should not be used for contracting out studies but reallocated to the Nurses' Scholarship Program which has not been funded for the fiscal year 1983.

The proposed revision of OMB Circular A-76 is broader in scope than the existing version in that it would among other measures:

1. Require activities with less than 10 full-time equivalent employees (FTEEs) to contract out its work as soon as practicable but not later than September 30, 1983, and without any cost comparison study.

2. Agencies with as many as 25 FTEEs should not incur the delay or expense of cost comparison studies to justify in-house performance but should convert to contracting out again as soon as possible but not later than September 30, 1983.

3. In the case of agencies with more than 25 FTEEs, the agency head, normally a political appointee, may waive cost comparison studies and contract out activities when other studies have proved it would be cheaper to contract out and there will be adequate private sector competition.

4. A new requirement for personnel, such as in a newly activated VA facility, will be contracted out without a cost comparison unless there is no satisfactory commercial service available or certain specific national defense activities preclude contracting out.

Contracting out is touted as a cost-savings measure and the test for feasibility is the ability of the contractor to provide a given service for at least 10 percent less than it could be accomplished in-house be federal civilian employees. I would suggest to you, Mr. Chairman, that once an agency contracts with a private entity for a given service, it will lose both the personnel and the capacity to perform the function in-house itself and in areas where there is only one contractor available, that contractor would be in a position to subsequently demand ever greater fees for performing the same service.

Mr. Chairman, 38 U.S.C. 4101(a) charges the Veterans Administration's Department of Medicine and Surgery (DM&S) ". . . to provide a complete medical and hospital service . . . for the medical care and treatment of veterans." To enhance this function and provide health care personnel to the Nation, DM&S is also charged under 38 U.S.C. 4101 (b)" . . . to carry out a program of education and training of such health care personnel" and under 38 U.S.C. 4101(c) ". . . to carry out a program of medical research . . ." Therefore, DM&S is much more than a provider of health care for veterans. It is, in fact, an integrated national system of teaching hospitals, clinics, research centers, and nursing homes providing a broad range of care and services to our Nation's veterans.

Mr. Chairman, in an opinion issued March 21, 1980, the General Counsel of the Veterans Administration ruled that in light of the specific statutory structure in functions of the Department of Medicine and Surgery as set forth in Title 38, that, "The application of A-76 to the basic medical care operations of the DM&S cannot

be justified legally . . ." Notwithstanding, the administration continues to support such contracting out.

Mr. Chairman, the Chairman of the Subcommittee on Hospitals and Health Care, the Honorable Ronald M. Mottl, has introduced H.R. 4851 to amend 38 U.S.C. 4101 by adding a new subsection exempting the Department of Medicine and Surgery in the Veterans Administration from any Office of Management and Budget policy or directive prescribing procedures or contracting out of commercial or industrial functions.

Mr. Chairman, H.R. 4851 fulfills in part our current resolution with respect to contracting out and the VFW urges its expeditious passage. As our Commander-in-Chief, Arthur J. Fellwock stated before the full Committee last month, maintaining the integrity of the VA hospital and medical care system is the first priority of our organization.

Mr. Chairman, contracting out has been pursued by various administrations for more than a decade and many are unaware of the numbers of jobs involved. An article with respect to contracting out in the U.S. News and World Report of February 18, 1980, entitled "U.S. Government's Invisible Workers," stated: "Experts believe that, while officially the Federal-rolls, including postal workers, has stayed around 2.9 million since 1970, the number of workers paid indirectly by Washington has soared to perhaps 8 million people." A recent article in the Washington Post of April 21, 1982, indicated that 8,236 Federal-civilian positions have been eliminated through contracting out between January 1981 and February 1982. The proposed revision of OMB Circular A-76 further encourages mass contracting out and in many instances without any cost comparison studies whatsoever. Our basic objection to contracting out is that it does violence to veterans preference in Federal employment though the abolishment of positions and, further, that fewer and fewer Federal jobs are available to veterans who have rendered a very special service to our nation.

This concludes my testimony, Mr. Chairman, and I will be happy to respond to any questions you may have.

RESOLUTION NO. 622—OPPOSE CONTRACTING OF VA SERVICES

Whereas, an area of increasing concern is the contracting out of service within the Veterans Administration as proposed by the Office of Management and Budget Circular A-76; and

Whereas, the implementation of such a drastic change in the method of providing service at Veterans Administration Health Care facilities will tend to affect adversely the quality of care of the veteran increasing the potential of employee strikes; and

Whereas, the use of commercial contractors will tend to create problems of untold magnitude and will disrupt the cohesiveness essential to the effective direct and indirect patient care operational capability of Veterans Administration health care delivery; and

Whereas, contracting out of patient care services in Veterans Administration Health Care facilities is in no way comparable to the contracting out of business-commercial type services in other agencies not related to health care both in the federal government or the private sector; and

Whereas, the continuing contracting out of services will seriously jeopardize veterans employment rights and represents an attack on veterans preference laws diminishing the number of full-time jobs otherwise available to war veterans; now, therefore, Be it

Resolved, By the 82nd National Convention of the Veterans of Foreign Wars of the United States, that we and the Congress strongly resist and urge the Veterans Administration to oppose any further attempt by the Office of Management and Budget to implement the provisions of OMB Circular A-76.

[Adopted by the 82nd National Convention of the Veterans of Foreign Wars of the United States held in Philadelphia, Pennsylvania, August 14-20, 1981.]

PREPARED STATEMENT OF GABRIEL P. BRINSKY, AMVETS NATIONAL SERVICE AND LEGISLATIVE DIRECTOR

Good Morning. As requested, my testimony will be short and we ask that the complete statement be incorporated into the records.

To briefly summarize our position, we are of the view that OMB Circular A-76 should never have been intended to apply to the Department of Medicine and Sur-

gery of the Veterans Administration. Many of its provisions are not applicable to hands-on-care in the Veterans Administration Health Care facilities. This leaves approximately 21 activities which could conceivably be covered by the Circular.

The proposed draft revision of A-76 goes further than the original Circular, it sets thresholds below which in-house commercial activities would be converted to contract without a cost comparision. Activities with less than 10 full-time employees would be converted to contract performance. Cost comparisons would not be required to justify in-house performance of commercial activities with 10 to 25 full-time employees.

These mandates appear to be arbitary and their desirability is at least questionable. We continue to be of the opinion that the matter of contracting out should be a managerial decision based on the local conditions and the needs of the activity. The Veterans Administration has the authority to contract out. The Department of Medicine and Survery has in fact been augmenting the amount expended through contract services. In fiscal year 1980, almost half of the funds, $622 million, expended for maintenance, repair and operation of VA Health Care facilities, was expended through contract services.

For these and the more detailed reasons set forth in our statement, AMVETS is strongly opposed to the proposed drafted revision of OMB Circular A-76.

We favor the enactment of legislation as reflected by HR-4851, which was introduced in the First Session which would exempt the Department of Medicine and Surgery from directives like those under consideration.

Mr. Chairman, Members of the Committee, AMVETS is apreciative of this oportunity to express its views concerning the proposed revision by the Offce of Management and Budget to Circular A-76.

Our primary concerns, as we have previously expressed them pertains to its effects concerning the Department of Medicine and Surgery as it relates to the health care program administered by the Veterans Administration.

It has always been our view that the provisions of the basic Circular A-76, should not apply to the Department of Medicine and Surgery by reason of its unique purpose. The Veterans Administration Health Care Program was established by the Congress to take care of those who have served. The system has grown to 172 hospitals to take care of those veterans who require in-patient treatment. It has evolved as one of the most cost-efficient and effective systems of its kind in the world. This is not to say that there is no room for managerial and other improvements in the administration of health care. But we do, respectfully, suggest that the VA hospital system is a service unique in character created by the Congress for a select segment of the population of the country. This is to say, that in determining managerial restraints or fiscal year direction, which may appropriately be for application throughout the Federal Government, there is a caveat. And that is that cost itself even in providing functional services should not be the sole criteria in determining whether or not resort should be made to contracting out. For there are other important considerations such as the effect that such a functional service, or as referred to in the Circular as in-house commercial or industrial activities, may have upon a hands-on care aspect of the health care program.

Under the proposed revision of OMB Circular A-76, certain thresholds would be established which would require conversion to contract performance without a cost comparison. As we have repeatedly testified on the subject, AMVETS has no argument with the overall concept of OMB Circular A-76 inasfar as it relates to competitiveness in the selection of the most cost effective services. What we have consistently questioned is the desirability of considering certain services, such as health care, as something which can be evaluated or measured in terms of dollars. From the very beginning, AMVETS has advocated that the Department of Medicine and Surgery of the Veterans Administration should be exempted from the provisions as originally proposed by OMB Circular A-76. This whole subject has been a matter of concern and while the concerns were alleviated with the clarifications which subsequently ensued, the current drafted revision proposed to the Circular has reopened some of those anxieties.

In 1980, an opinion was obtained from the General Counsel of the Veterans Administration which in effect held that OMB Circular A-76 did not apply to hands-on-care in the Veterans Administration's health care facilities. This interpretation was originally disputed as a valid interpretation by the Office of Management and Budget. Subsequently, it came to accept it.

Even so, the cost comparison studies which were required by Circular A-76 in the VA health care facilities would cost approximately $29,000,000 for 4,000 or there about studies.

Public Law 97-66 which was signed by the President of the United States on October 17, 1981, precluded the Veterans Administration from conducting any further studies on the feasibility of contracting out in the VA health care facilities unless the Congress had expressedly made such funds available for these specific purposes.

We continue to be convinced that there are certain services which are above being equated or measured in terms of dollars. There are certain products in the form of services, such as health care, which do not lend themselves to a profit or loss evaluation and any attempt to do so is an anachronistic. Granted, that costs cannot be ignored as a factor in providing functional services, it cannot at the same time be considered as the sole criteria in determining whether or not resort should be made to contracting out. We firmly advocate that as much as it may be desirable that the Federal Government rely on competitive private enterprise to supply needed commercial products and services, a compatible corollary is that management should not be divested of its responsibility for introducing cost effective savings in all phases of its operations. It appears to us what commercial or industrial services should be performed by contract or in-house should be a management decision.

Before commenting on the specifics of the proposed draft revision to OMB Circular A-76, we would like to make some observations concerning the role of managerial responsibility for introducing cost effective savings in all phases of its operations. For example, under the Department of Medicine and Surgery, of $622,000,000 expended in fiscal year 1980 for maintenance, repair and operation of VA health care facilities, almost half of that amount was expended through contract services. This would seem to substantiate the position that management is aware of the desirability of competitive biding to effectuate cost savings wherever such is indicated and possible. From all indications the trend seems to be towards an increased reliance upon the private sector for various functions such as ambulance service, garbage and refuse collection, plant maintenance, insect control, etc. If this be so, certainly management should be permitted to continue to exercise its expertise in the realm of realities as they exist under certian circumstances rather than by being mandated to follow stereotype dictates of a written instruction. Incidentally, written instructions which may or may not be applicable in a given situation.

It is our understanding that an inter-Agency Task Force was formed by OMB on which the Veterans Administration was represented for the purpose of revising the basic A-76 Circular and the Cost Comparison Handbook. The draft proposes certain thresholds below which in-house commercial activities should be converted to contract without a cost comparison being made. According to our information, these proposed thresholds do not represent the consensus of the task force but were developed by the Office of Management and Budget. While these draft revisions have not been finalized, they provide in effect that the Department of Medicine and Surgery of the Veterans Administration would be required to eliminate the discretion to perform cost comparisons for activities encompassing less than 10 full-time employees. Latitude would exist to study activities between 10 to 25 full-time employees if it is determined that there is inadequate competition. The language appears to be flexible enough to allow cost comparisions as a matter of policy. Yet, the language contained in Section 601 of Public Law 97-66 generally proscribes cost comparisons which makes it appear that conversion to contract might be required unless inadequate competition could be documented. Another matter for concern is that the proposed draft of the Circular revision provides that activities be consolidated for cost comparison purposes. Inevitably, this would reduce the instances of conversion to contract without cost studies. In view of the specific provisions of Public Law 97-66 which precludes the cost comparison process in the Department of Medicine and Surgery unless funds are specifically appropriated for that purpose, such a course might be contrary to the existing law.

Returning to the specific provisions of the proposed draft revision to OMB Circular 76, it would provide that activities with less than 10 full-time employees would be converted to contract performance as soon as practicable, but no later than September 30, 1983, without a cost comparison. Agencies are mandated not to incur the delay and expense of conducting cost comparisons to justify in-house performance of commercial activities with 10 to 25 fulltime employees. Such in-house activities are expected to be converted to contract as soon as practicable, but no later than September 30, 1983, without a cost comparison. However, should the agency determine that inadequate competition exists, a cost comparison may be conducted with the written approval of a Senior Agency Official.

Accepting the interpretation of the opinion of the General Counsel of the Veterans Administration issued regarding OMB circular A-76 as to what constitutes hands-on care in the Veterans Administration Health Care Facilities and thus not subject to the provisions of the Circular, there are more than 20 activities in the

Department of Medicine and surgery which would be subjected to the provisions of the draft revision. Some of these are custodial service, medical transcription, refuse collection, laundry, and air conditioning-refrigeration, to name a few.

We cannot reiterate our position too emphatically that OMB Circular A-76 or the proposed draft revision should not be applicable to the Department of Medicine and Surgery at the Veterans Administration for the simple reason that in health care the elements of quality and service know no cost factor. There is no way of measuring an ineffectual or poorly administered custodial service in terms of the overall effect which it may have upon an effective health care program. Failure to immediately repair malfunctioning air conditioning equipment or refrigeration, delays in refuse collection, or inadequate protective measures in proper laundrying, can have great repercussions upon the health care being administered. For the operation of a hospital requires the coordinated efforts of all cohesive units. The loss of control over one of these units can greatly effect the operation of other units. Concededly, there are commercial and industrial functions which can be perfomred on a contractual basis, nonetheless, these are determinations which should be left to the management who is conversing with the prevailing services available in the community which he services.

To restrict, as is proposed by the revision to Circular A-76, the flexibility of management in making decisions relating to the operation of his, is not desirable or within the context of the purpose of the philosophy of recognizing that certain functions should not be performed in competition with private commercial sources.

Before concluding, AMVETS wishes to unequivocably endorse the enactment of HR-4851 introduced by Congressman Mottl which would amend Title 38 United States Code to except the Department of Medicine and Surgery in the Veterans Administration from any Office of Management and Budget policy or directive prescribing procedure for contracting out commercial or industrial functions.

In summary, we respectfully suggest that the legislative history and intent of the provisions of OMB Circular A-76 or its draft revisions as proposed were never intended to apply to operations such as the Department of Medicine and Surgery of the Veterans Administration. The authority for contracting out presently exist and the directives of the Circular mandating a certain course of action is not required. The flexibility of decision making as to whether or not a particular activity should be contracted out or kept in-house is a decision of management. Were certain directives to be imposed upon management, its flexibility and its ability to respond to unusual circumstances would be greatly and adversely affected.

This concludes our testimony and I will be happy to respond to any questions which you may have.

DRAFT COPY OF PROPOSED REVISION TO OMB CIRCULAR A-76

To: The heads of executive departments and establishments.
Subject: Policies and procedures for acquiring commercial products and services needed by the government.

(1) PURPOSE

This circular establishes the policies and procedures used to determine whether needed commercial products and services should be obtained by contract with private sources or in-house using Government facilities and personnel.

(2) RECISSIONS

OMB Circular No. A-76 (revised), dated March 29, 1979 and all subsequent amendments.

(3) AUTHORITY

The Budget and Accounting Act of 1921 (31 U.S.C. 16).

4. BACKGROUND

This national policy has been expressed continuously in Bureau of the Budget Bulletins issued in 1955, 1957, and 1960. In 1966, Circular No. A-76 was issued and, for the first time, prescribed the policy and implementing guidelines in a permanent directive. The Circular was revised in 1967, and again in 1979.

The March 29, 1979 revised Circular (1) reaffirmed the Government's general policy of reliance on the private sector for products and services, while recognizing that (2) certain functions are inherently Governmental in nature and must be performed by Government personnel, and (3) relative cost must be given appropriate consideration in decisions between in-house performance and reliance on private commercial sources. Transmittal Memorandum No. 4 transmitted the revised Circular and deferred applicability of the Circular to research and development activities, and clarified the relationship of the Circular to Government-owned, Government-operated activities and to personnel ceilings. Transmittal Memorandum No. 5 and No. 6 clarified certain policies and procedures in the Circular and the Cost Comparison Handbook, Supplement No. 1 to the Circular.

5. POLICY

It is the general policy of the United States Government to:

(a) *Rely on the Private Sector.*—The Federal Government shall rely on competitive private enterprise to supply needed commercial products and services. However, where the Government is performing a commercial activity, a rigorous comparison of contract costs versus in-house costs should be performed in accordance with the provisions of this Circular to determine who should do the work.

(b) *Retain Governmental Functions In-House.* Certain functions are inherently Governmental in nature, mandating performance by Federal employees.

6. DEFINITIONS

For the purposes of this Circular:

(a) A "Government commercial activity" is a function operated and managed by a Federal executive agency and providing a product or service obtainable from a private source. A representative, but not comprehensive, listing of such activities is provided in Attachment A. An activity can be identified with an organizaiton or a type of work, but must be separable from other functions so as to be suitable for performance either in-house or by contract.

(b) An "expansion" is the modernization, replacement, upgrade, or enlargement of a Government commercial activity involving an increase exceeding 20 percent of the total capital investment or 20 percent of the annual cost of labor and material. A consolidation of two or more activities is not an "expansion" unless the proposed total capital investment or annual cost of labor and material exceeds the total from the individual activities by the amount of threshold.

(c) A "conversion to contract" is the transfer of work from a Government commercial or industrial activity to performance under contract by a private commercial source.

(d) A "conversion to in-house" is the return of work from a private commercial source to Government performance.

(e) A "new requirement" is a newly-established need for a commercial product or service.

(f) A "private commercial source" is a private business, university, or other non-Federal activity, located in the United States, its territories and possessions, the District of Columbia, or the Commonwealth of Puerto Rico, which provides a commercial or industrial product or service required by Government agencies.

(g) A "Governmental function" is a function which must be performed in-house due to a special relationship in executing Governmental responsibilities. Services or products provided in support of Governmental functions, such as those examples listed in Attachment A of this Circular, are considered commercial activities and are subject to the policies and requirements of this Circular. Governmental functions can fall into two categories:

(1) The act of Governing, as in discretionary applicaiton of Government authority. Examples include judicial investigations, prosecutions and other judicial functions; management of Government programs requiring value judgments, as in directing the national defense; management and direction of the Armed Services; conduct of foreign relations; selection of program priorities; direction of Federal employees; regulation of the use of space, oceans, navigable rivers and other natural resources; direction of intelligence and counter-intelligence operations; and regulation of industry and commerce, including food and drugs.

(2) Monetary transactions and entitlements, as in Government benefit programs; tax collection and revenue disbursements by the Government; control of the public treasury, accounts, and money supply; and the administration of public trusts.

(h) A "Full Time Equivalent" (FTE) position is one which involves the planned use of 2,080 straight time paid hours in a fiscal year (to include annual, sick and

holiday leave and paid time off for training). For example, two part-time employees, each working 1040 straight time paid hours in a fiscal year equals "one FTE."

(i) Adversely Affected Employees. Those persons identified for release from their competitive level by an agency, in accordance with 5 CFR Part 351 and Chapter 35, Title 5 of the U.S. Code.

(j) A "cost comparison" is the completion of the in-house cost estimate and comparison of that estimate to the announced contract price.

7. SCOPE

(a) No executive agency will engage in or contract for commercial or industrial activities except in accordance with the provisions of this Circular, or as otherwise provided by law, including, for example, Title 44 of the U.S. Code.

(b) The implementation provisions of this Circular do not apply to Governmental functions as defined in paragraph 6(g). These functions must be performed in-house by Government personnel.

(c) This Circular does not provide authority to enter into contracts. Such authority is set forth in applicable procurement regulations.

(d) This Circular will not be used as authority to enter into personal services contracts which establish a situation tantamount to an employer-employee relationship between the Government and individual contract personnel.

(1) Employer-employee relationships are those which involve close continuous supervision of individual contractor employees, not oversight by the Government of contractor operations, or the end product.

(2) Close interaction of the Government with contractor employees during the transition period involved in a conversion to contract does not of itself establish an employer-employee relationship.

(e) This Circular will not be used to justify a conversion to contract solely to avoid personnel ceilings or salary limitations. However, when justified under this Circular, agencies shall contract out regardless of the relationship between levels and authorized ceilings.

(f) Major system acquisitions are governed by the provisions of OMB Circular No. A-109, "Major System Acquisitions." Reliance on the private sector is one of the general policies contained in Circular A-109 to ensure competitive consideration of all alternatives before making a decision as to the best method of satisfying an agency mission need.

(g) This Circular does not apply to consulting services which are of a purely advisory nature relating to the governmental functions of agency administration and management, and program management. Agencies are to follow the policies and procedures in OMB Circular No. A-120, "Guidelines for the Use of Consulting Services," for the acquisition and use of such services.

(h) This Circular applies to printing and binding only in those agencies or departments which are exempted by law from the provisions of Title 44 of the U.S. Code.

(i) This Circular or portions of it should not be applied when it would be contrary to law or inconsistent with the terms of any treaty or international agreement.

(j) Compliance with this Circular with respect to conducting cost comparisons of inventoried research and development activities, except for new requirements and expansions, are deferred indefinitely pending the development of appropriate criteria. Separable services or products provided in support of research and development activities, such as those examples listed in Attachment A of this Circular, are considered commercial activities and are subject to the policies and requirements of this Circular.

(8) GOVERNMENT OPERATION OF A COMMERCIAL ACTIVITY

Government operation of a commercial activity may be authorized under one of the following conditions.

(a) No Satisfactory Commercial Source Available.—

(1) A Government commercial activity can be authorized without a cost comparison when it is demonstrated that:

(a) There is no private commercial source capable of providing the product or service that is needed; or

(b) Use of a private commercial source would cause an unacceptable delay or disruption of an essential agency program.

(2) Before concluding that there is no private commercial source capable of providing the needed product or service, the agency must make all reasonable efforts to identify available sources.

(a) As a minimum, the agency must place at least three notices of the requirement in the Commerce Business Daily over a 90-day period. In the case of bona fide urgent requirements, publication in the Commerce Business Daily can be reduced to two notices over a 30-day period.

(b) Agencies' efforts to find satisfactory commercial sources, especially those entities in preferential procurement programs (paragraph 13) should include obtaining assistance from the General Services Administration, and the Small Business Administration.

(c) Special care should be taken to avoid unnecessary or overly restrictive specifications in the solicitation, thereby thwarting efforts to find satisfactory sources. The performance requirements in the specification shall not exceed the level of performance expected of the in-house Government workforce.

(3) A conclusion that use of a commercial source would not be satisfactory because it would cause an unacceptable delay or disrupt an agency program requires a specific documented explanation, approved by a senior agency official.

(a) Delay or disruption must be spelled out specifically in terms of cost, time, performance measures, and impact on agency missions.

(b) Disruption must be shown to be of a lasting or unacceptable nature. Transitory disruption caused by conversions are not sufficient grounds.

(c) In all cases, specific explanations must be documented. If it is known that the function has been performed by contract elsewhere or at another time, the justification must specify why circumstances are substantially different.

(d) The fact that an activity involves a classified program, or is part of an agency's basic mission, or that there is a possibility of a strike by contract employees is not an adequate justification for in-house performance of that activity. Urgency alone is not an adequate reason for continuing a Government commercial activity. It must be clearly shown that commercial sources are not able and the Government is able to provide the product or service when needed.

(b) National Defense.—

(1) A Government commercial activity, operated by military personnel, may be justified when:

(a) The activity or military personnel assigned are utilized in or subject to deployment in a direct combat support or combat service support role;

(b) The activity is essential for training in those skills which are exclusively military in nature; or

(c) The activity is needed to provide appropriate work assignments for career progression or a rotation base for overseas assignments.

(2) A Government commercial activity providing depot or intermediate level maintenance may be justified in accordance with criteria approved by the Secretary of Defense to ensure a ready and controlled source of technical competence and resources necessary to meet military contingencies. These criteria will limit the extent of in-house capability and capacity within the military departments for depot and intermediate maintenance support of mission-essential equipment to the minimum necessary to accomplish that objective. Justification under these criteria will require a detailed explanation, on a case-by-case basis, why the needed capability cannot be supplied by:

(a) A private commercial source; or

(b) Contract operation of Government-owned facilities.

Such justification must be approved by the agency head or designee.

c. Cost. Continued operation of a Government commercial activity may be authorized if a cost comparison, prepared in accordance with this Circular and the Cost Comparison Handbook, indicates that the Government can provide or is providing a product or service at a lower total cost than if it were obtained from a private commercial source.

(9) COST COMPARISONS

A decision for continuing in-house performance based on cost (8.c) must be supported by a cost comparison prepared in accordance with this Circular and the Cost Comparison Handbook.

(a) Common Ground Rules.—

(1) Thresholds.

(a) Activities with less than 10 FTEs shall be converted to contract performance as soon as practicable, but no later than September 30, 1983, without a cost comparison.

(b) Agencies should not incur the delay and expense of conducting cost comparisons to justify in-house performance of commercial activities with 10 to 25 FTEs.

Such in-house activities should be converted to cost comparison. However, if an agency determines inadequate competition exists, a cost comparison may be conducted with the written approval of a senior agency official.

(c) Activities exceeding 25 FTEs must undergo a cost comparison to justify continued in-house performance unless the agency head or deputy waives the requirement for a cost comparison in accordance with paragraph 9.a.(2).

(d) The head of an agency is authorized to waive cost comparisons for commercial activities over 25 FTEs and convert such activities to contract performance when it is determined in writing and approved by the agency head or deputy that:

(i) Based on the results of recent cost comparisons of like activities, GAO report audit findings, etc., the in-house operation does not have a reasonable expectation of winning the competition and therefore conduct of a cost comparison would not be necessary or cost efficient; and

(ii) There will be adequate private sector competition.

(2) Performance Work Statements.

(a) Both Government and commercial cost estimates must be based on the same scope of work and the same level of performance. This requires the preparation of a sufficiently precise work statement with performance standards that can be monitored for either mode of performance.

(b) Office of Federal Procurement Policy Supplement No. 2 to this Circular, "Writing and Administering Performance Statements of Work for Service Contracts," shall be used for preparing work statements for services and quality assurance plans used in cost comparisons.

(c) All work statements and quality assurance plans for existing service contracts subject to the provisions of this Circular will be rewritten using Supplement No. 2 before reprocurement, even though a cost comparison will not be performed. This requirement is not applicable to contracts obtained under small purchase procedures or in those cases where the agency determines that application of Supplement No. 2 to existing service contracts would not be in the best interests of mission accomplishment.

(3) Standard cost factors will be used as prescibed by the Cost Comparison Handbook and as supplemented by agencies for particular operations. It will be incumbent on each agency to defend any variations in costing from one case to another.

(4) Cost comparisons will include all significant costs both for Government and contract performance. Costs that would be the same for either in-house or contract operation need not be included in the cost comparison.

(5) Solicitation of bids or offers from contractors shall provide for prepriced options or renewal options for at least two 12-month out-year periods. These measures will guard against "buy-in" pricing on the part of contractors. While recompetition also guards against "buy-ins," the use of prepriced or renewal options provides certain advantages such as continuity of operation, the possibility of lower contract prices when the contractor is required to provide equipment or facilities, and reduced turbulence and disruption.

(6) The cost comparison for existing Government commercial activities will be based upon competitive procurement to the maximum extent practicable. Although non-competitive negotiated procurements will generally not be used for cost comparison purposes (paragraph 13), qualified 8(a) concerns, Federal Prison Industries and workshops for the blind or other severely handicapped will be encouraged to submit competitive, (i.e., small business and labor surplus area set-asides), may be used for a cost comparison provided there exists adequate competition among qualified firms.

(b) Contract Costs.—The contract cost figure must be based on a binding firm bid or proposal obtained through full and open competition solicited in accordance with applicable acquisition regulations. Bidders or offerors must be told that an in-house cost estimate is being developed and that a contract may or may not result, depending on the outcome of the cost comparison. Current contract prices will not be used in a cost comparison.

(c) Government operation.—

(1) Government—costs must be based on the most efficient organization and operation feasible—After development of the Statement of Work, and in accordance with agency staffing and personnel regulations, internal management reviews should be performed to determine the most efficient and effective in-house operation to be used for the in-house cost estimate. The agency lead or designee shall certify that the in-house estimate to be used in the cost comparison is based on the most efficient and effective organization. Such certification must be made prior to pricing out the in-house cost estimate.

(2) Proposed changes in staffing levels should begin as soon as practicable after completion of the management review. Should the cost comparison result in a decision to accomplish the work in-house, implementation of the in-house staffing estimates must be initiated within 30 days after the solicitation cancellation, and accomplished as soon as practicable thereafter.

(d) Cost Differential.—An existing in-house activity will not be converted to contract performance on the basis of economy unless the projected cost advantage to the Government is at least 10 percent of the in-house personnel cost for the performance period.

(e) Independent reviews.—

(1) All cost comparisons must be reviewed by an impartial activity which is organizationally independent of the commercial activity being studied and the activity preparing the cost comparison.

(2) The independent review should be of those costs which can be determined prior to the date established in the solicitation for receipt of bids or offers and should ensure those costs were prepared in accordance with the Circular and the Cost Comparison Handbook.

(3) The independent review should substantiate the currency, reasonableness, accuracy, and completeness of the cost comparison. This includes assuring the in-house cost estimates are derived from the requirements prescribed in the Performance Work Statement and solicitation documents. The cost comparison supporting documentation must be sufficient to require no additional interpretation.

(4) When the reviewer determines that the cost comparison— —, the reviewer will sign the cost comparison form.

(10) ADMINISTERING THE POLICY

(a) Implementation.—Each agency head will:

(1) Designate an official at the assistant secretary or equivalent level, and officials at subordinate contact points for major components, to have overall responsibility for implementation of this Circular within the agency.

(2) Establish one or more offices as central points of contact to carry out specific implementation actions. These offices will have access to all decision documents and data pertinent to actions taken under the Circular and will respond, in a timely manner, to all requests concerning inventories, schedules, reviews, and results of reviews. In considering requests which include information supplied by contractors or prospective contractors, agencies will be guided by OFPP Policy Letter No. 78–3, "Requests for Disclosure of Contractor-Supplied Information Obtained in the Course of a Procurement."

(3) Implement this Circular within 20 days of its issuance with the minimum necessary internal instructions. When issued, copies of the internal instructions and any subsequent changes, including the appeals procedure in paragraph 15, will be forwarded to the Office of Federal Procurement Policy, OMB.

(4) Ensure that all contracts awarded as a result of a conversion (whether or not a cost comparison was performed):

(a) Contain all applicable clauses and provisions related to equal employment opportunities, veterans' preference, and minimum wages and fringe benefits, including implementation of OFPP Policy Letter No. 78–2, dated March 29, 1978, relating to "wage busting;"

(b) Include a provision, consistent with Government post employment conflict of interest standards, that the contractor will give Federal employees, adversely affected as a result of the conversion to contract performance, the right of first refusal for employment openings on the contract in positions for which they are qualified, and notify the Government within one year of the contract effective date if such adversely affected personnel are hired;

(c) Are awarded to a responsible and responsive bidder or offeror, as required by applicable procurement regulations; and

(d) Are administered and monitored to achieve proper performance, using appropriate contractual remedies any time performance is less than satisfactory.

(e) Include in contracts for critical or sensitive services a strike contingency plan explaining how the contractor will assure there is no significant interruption of contract services due to labor disruption.

(5) In all negotiated procurements in excess of $500,000, the contractor is required by Public Law 95–507 to submit a small and disadvantaged business subcontracting plan. In evaluating such contract proposals for source evaluation, points will be allocated to the subcontracting plan.

(6) Exert maximum effort to find suitable positions for adversely affected federal employees, including:

(a) Giving them priority consideration for available positions within the Agency;

(b) Establishing a Re-employment Priority List and a Positive Placement Program;

(c) Paying reasonable costs for training and relocation when these contribute directly to placement;

(d) Coordinating with the Office of Personnel Management and the Department of Labor to ensure adversely affected employees have access to Government-wide placement programs including the OPM-operated Displaced Employees Program and Voluntary Interagency Placement Program, and the Department of Labor-operated Federal Employees Re-employment Registry; and

(e) Assisting employees in exercising the right of first refusal for employment openings on the contract in positions for which they are qualified.

(7) Ensure that the probable impact of decisions concerning the mode of performance of commercial activities are reflected in budget estimates in accordance with the instructions in OMB Circular No. A-11, "Preparation and Submission of Budget Estimates."

(8) Each agency will provide for alterations to the mode of performance to be timed in consonance with, and adjusted for the budget process to the extent required and consistent with the firm bid cost study approach.

(b) Inventories.—

(1) Each agency will immediately compile a complete inventory of all Governmental commercial activities (as defined in paragraph 6.a.) which they operate. Inventories should list separately activities of 25 FTEs or less and activities of more than 25 FTEs.

(2) For each activity, the inventory should include the number of FTEs, the location, the date of the last review justifying continued in-house performance (paragraph 8), and the date of the next scheduled review.

(3) Each Agency shall update inventories annually.

(c) Reviews.—

(1) In-house activities. Agencies will schedule reviews of in-house commercial activities in their inventories. As soon as practicable, the review schedules will be made available by the agency to all potentially affected employees and their representatives, and published for the information of contractors. Changes to the review schedule require 60-day public notice to all affected parties.

(a) All commercial activities remaining in the inventory must be justified in accordance with paragraph 8 by September 30, 1983.

(b) Every consideration should be given to consolidating commercial activities into single activities for cost comparisons and potential contracts. Consolidating these small activities has many advantages: expediting the completion of the cost comparison; simplifying the administrative process; providing greater economy through integration of activities; reduced contract administration and evaluation costs; and simplified management control.

(c) Once an activity has been justified for in-house operation under paragraph 8, it shall be reviewed at least once every five years.

Contracted activities. If an agency determines that the re-solicitation of a contracted commercial activity may result in inadequate competition, a cost comparison may be performed in accordance with the Cost Comparison Handbook.

(a) A cost comparison will not be scheduled unless anticipated savings will equal 10 percent of in-house costs plus 25 percent of the cost of ownership of any additional equipment and facilities i.e. assets not currently owned by — —, The anticipated savings mut be fully documented in writing. If this savings is likely, the agency may proceed with the cost comparison with the approval of an assistant secretary or equivalent. However, contracts awarded under preferential procurement programs as defined in paragraph 13 are exempt. Notwithstanding this exemption, the contracting officer is obligated to negotiate a fair market price for contracts awarded under preferential procurement programs. If a fair market price cannot be negotiated, the activity may be opened to competition.

(b) Contracts for commercial activities that are shown to be justified for in-house performance will be allowed to expire (options will not be exercised) so that in-house capability can be established. When the required FTEs cannot be accommodated within the agency's personnel ceiling, a request for adjustment will be submitted to OMB in conjunction with the annual budget review process.

(3) In cases where an expansion of a Government commercial activity is anticipated, a review of the entire activity, including the proposed expansion, shall be conducted. Sufficient public notice will be given to all affected parties if the review will

occur outside of the normal scheduled review. If continued in-house performance is not justified under paragraphs 8.a. and 8.b., a cost comparison will be performed. The entire activity should be performed by contract if the cost of in-house performance of the entire activity, including the proposed expansion, exceeds the cost of contract performance by a factor equal to (a) 10 percent of the personnel costs of the present activity minus (b) 10 percent of the increased direct labor costs and minus (c) 25 percent of the cost of ownership of the additional capital assets required by the proposed expansion i.e. assets not currently owned by the — —. The cost of ownership is the depreciation and cost of capital calculated on these assets.

(d) New requirements.—A new requirement that does not meet the criteria for Government operation in paragraphs 8.a. and 8.b. shall be satisfied by contract performance without a cost comparison. New requirements which would be suitable for award under a preferential procurement program should be satisfied by such a contract.

(11) GOVERNMENT-OWNED, CONTRACTOR-OPERATED (GOCO) ACTIVITIES

(a) Satisfaction of Government requirements through contractor-owned contractor-operated (COCO) facilities shall be preferred over GOCO activities. Any decision to satisfy agency requirements through GOCO activities shall be justified in accordance with paragraph 8 of this Circular, and approved by the agency head or designee.

(b) Existing GOCO activities shall be reviewed prior to the end of each contract period to determine if adequate COCO sources exist to enable the total GOCO activity to be placed in the private sector when cost effectiveness is the determining factor.

(c) GOCO facilities will not be expanded to accommodate new requirement if adequate COCO sources are available. Additional requirements will be satisfied by COCO sources.

(12) USE OF PRODUCTS AND SERVICES FROM OTHER FEDERAL AGENCIES

(a) In accordance with the provisions of the Federal Property and Administrative Services Act of 1949 and the Economy Act of 1921 (31 USC 686):

(1) Excess property and services available from other Federeal agencies may be used unless the needed product or service can be more economical.

(2) Agencies shall not create or expand capacity for the purpose of providing commercially available products or services to other agencies. When the performing agency's own requirements increase, capacity used to support other agencies is no longer excess contract performance shall be used rather than acquiring additional capacity. Agencies using such excess capacity should be provided sufficient notice to arrange alternative sources. The support will be terminated unless exceptional circumstances prevent that agency from finding a new source.

(3) Excess in-house capacity which is being considered for use by another agency must be justified in accordance with paragraph 8 of this Circular. When the cost justification is used (paragraph 8.c.), the agency requiring the product or service will solicit competitive bids or proposals to establish commercial costs, and award a contract when more economical. The prospective providing agency will prepare the Government cost estimate.

(b) Continued operation of commercial activities having the primary purpose of providing a product or service to other Government agencies, such as the Federal Data Processing Centers or the Office of Personnel Management Training Centers, must be justified in accordance with paragraph 8 of this Circular. All such reviews shall be completed by September 30, 1983.

(1) If In-house performance is justified, agencies may use the products or services provided with no further justification.

(2) If September 30, 1983, the activity has not been justified for continued in-house performance, user agencies shall obtain the services directly from the private sector.

(13) PREFERENTIAL PROCUREMENT PROGRAMS

(a) For purposes of this Circular "preferential procurement programs" includes small, minority and disadvantaged businesses, labor surplus and 8(a) set-aside and negotiated price agreements with Federal Prison Industries (FPI), and National Industries for the Severely Handicapped (NISH), and National Industries for the Blind (NIB).

(b) As specified in paragraph 9.a.(6) of this Circular, non-competitive proposals (8(a), NISH, FPI) are not suitable for use in a cost comparison. However; such preferential procurement programs should be considered upon expiration of a contract.

(c) Existing contracts awarded under preferential procurement programs may be reviewed for possible in-house performance only if 8.b. applies. Additionally, new requirements and conversions to contract performance of activities of less than 25 FTEs which are suitable for award under a preferential procurement program should be satisfied by such a contract without a cost comparison.

(d) Small business set-asides are competitive in nature and can be used in cost comparisons. However, if there is only one bidder, the bid shall not be opened, the solicitation will be cancelled prior to bid opening and immediately reannounced for open competition.

(14) ANNUAL REPORTING REQUIREMENTS

No later than November 15 of each year, agencies shall submit to the Office of Federal Procurement Policy a report on the implementation of OMB Circular No. A–76 in accordance with Attachments B, C, and D and in the format of the exhibits.

(15) APPEALS OF COST COMPARISON DECISIONS

(a) Each agency will establish an informal administrative review procedure to resolve appeals from directly affected parties questioning the determination between contract and in-house performance. The appeal procedure will apply only to decisions resulting from cost comparisons performed in compliance with this Circular and will not apply to questions concerning:

(1) Award to one contractor in preference to another, and

(2) The Government's management decisions relating to its performance requirements or decisions relating to organizing and staffing in-house activities for the most efficient performance.

(b) The appeals procedure is to provide an administrative safeguard to ensure that agency decisions are in accordance with procedures in the Cost Comparison Handbook.

(c) The appeals procedure must be independent and objective and provide for an expeditious determination within 30 calendar days by an impartial official at an organizationally higher level than the official who approved the original decision.

(d) To be considered eligible for review under the agency appeals procedures, appeals must:

(1) Be received by the agency in writing within 15 calendar days of the date initial decision was announced;

(2) Address specific line items on the Cost Comparison Form, and set forth the rationale for questioning those items; and

(3) Demonstrate that the result of the appeal may change the cost comparison decision.

(e) Since the appeal procedure is intended to protect the rights of all directly affected parties—Federal employees and their representative organizations, contractors and potential contractors, and contract employees and their representatives—the procedure and agency determination may not be subject to negotiation, arbitration, or agreements with any one of those parties.

(f) Decisions on appeals are final.

(16) ACTION REQUIREMENTS

Each agency head has the responsibility to ensure that the provisions of this Circular are followed. This Circular provides administrative direction to heads of agencies and does not establish, and shall not be construed to create any substantive or procedural basis to challenge any agency action or inaction on the basis that such action was not in accordance with this Circular, except as specifically set forth in paragraph 15 above.

(17) OMB RESPONSIBILITY AND CONTACT POINT

All questions or inquiries should be submitted to the Office of Management and Budget, Office of Federal Procurement Policy, 726 Jackson Place, N.W., Washington, D.C. 20503. Telephone Number (202) 395–3254.

(18) EFFECTIVE DATE

This Circular is effective immediately but need not be applied where a solicitation for contract bids or proposals issued prior to the effective date.

(19) SUNSET REVIEW DATE

The policy in this Circular will be reviewed no later than three years from the date of issuance.

EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF MANAGEMENT AND BUDGET

[Circular No. A-76, revised Transmittal Memorandum No. 6]

To: The heads of executive departments and establishments.
Subject: Policies for acquiring commercial or industrial type products and services needed by the Government.

This revision amends OMB Circular No. A-76 (revised), dated March 29, 1979; the Cost Comparison Handbook; and Transmittal Memorandums 4 and 5, dated March 29, 1979, and September 26, 1980, respectively.

1. Amendment to Transmittal Memorandum No. 5.—Paragraph 1.c. of Transmittal Memorandum No. 5, entitled "Application to Research and Development," is replaced as follows:

"*c. Application of the Circular to Research and Development.*—Compliance with this Circular and the periodic review of inventoried research and development activities, except for new starts and expansions, are deferred indefinitely pending the development of appropriate criteria for determining "core capability." The Department of Defense, however, shall follow the statutory provision of Section 802 of the Defense Appropriation Authorization Act of 1980 (Public Law 96-107)."

2. Amendments to OMB Circular No. A-76.—a. Paragraph 9.a.(1). Add the following sentences at the end of paragraph 9.a.(1):

"Office of Federal Procurement Policy Pamphlet No. 4, 'A Guide for Writing and Administering Performance Statements of Work for Service Contracts,' is designated as Supplement No. 2 to this Circular. Work statements for services and quality assurance plans used in cost comparisons will be written using Supplement No. 2. All work statements and quality assurance plans for existing service contracts subject to the provisions of this Circular will be rewritten using Supplement No. 2 before reprocurement, even though a cost comparison will not be performed. This requirement is not applicable to contracts obtained under small purchase procedures or in those cases where the agency determines that application of Supplement No. 2 would not be in the best interests of mission accomplishment."

CHANGES TO THE COST COMPARISON HANDBOOK SUPPLEMENT NO. 1, OMB CIRCULAR NO. A-76 (REVISED)

A. Chapter III. Paragraph H. Inflation of Out-Year Costs—Line 8. Add paragraphs 4 and 5 as follows:

"4. In cases where a contract for the needed product or services would include some form of economic adjustment clause for subsequent years, no allowance for inflation of those costs protected by the adjustment clause is included in out-year contract pricing, and corresponding costs of Government performance should not be inflated. For example, contracts subject to the Service Contract Act include a clause that provides for adjustments to accommodate labor cost increases necessitated by future minimum wage determinations. Accordingly, when contract performance would be under a contract subject to the Service Contract Act, labor costs for Government employees in occupations that would be included in the Act should be deducted from the base for inflation calculations."

"5. Depreciation costs for equipment or facilities, included in overhead or G&A expenses, must also be deducted before inflation is computed."

B. Chapter IV. Paragraph D. Contract Administration—Line 12. Add paragraph 3.

"3. The standard 4-percent contract administration rate shall be used unless there is precise and supportable evidence that expected contract administration costs will be less or more than 4 percent. In no case, however, will the rate exceed 6 percent.

"a. The following conditions must be met in order to exceed the 4-percent contract administration costs:

"(1) The estimate of contract administration cost is based on a formal Government quality assurance surveillance plan;

"(2) The solicitation must contain clearly defined contractor quality control requirements;

"(6) Estimate the retained pay costs associated with those persons who would be downgraded as result of a conversion. These incremental costs (the difference between current pay and downgraded pay) are continuing and not considered a one time conversion cost. This cost should be shown on line 26."

D. Chapter V. Paragraph F. Utilization of Government Capacity—Line 24. Add the following sentences to the end of paragraph F.1:

"In charging underutilized capacity do not include any underutilized personnel-related costs on line 24. Prudent management will ensure that personnel are assigned to other tasks or reductions made in the size of the overhead organization. Therefore, these costs are not properly chargeable to the cost of contracting-out."

E. Chapter V. Paragraph F. Substitute subparagraphs 5.a through 5.g. with subparagraphs 5.a through 5.i. as follows:

"a. Determine Government overhead costs chargeable to the in-house activity.

"b. Determine Government overhead costs chargeable to the cost of contracting-out.

"c. Subtract step b from step a.

"d. Determine any changes to Government overhead costs that should result if the service is contracted out (for example, can a position or part of a function be eliminated?).

"e. Subtract step d from step c.

"f. Go to lines 25 and 26 and identify those personnel who would continue to be employed in the G & A base if the in-house activity under review were to be contracted out. Multiply the combined salary and fringe benefits of these employees by the G & A rate."

MAJOR DIFFERENCES BETWEEN EXISTING AND PROPOSED PROVISIONS OF OMB CIRCULAR A-76

In August 1981, VA Central Office staff representing finance, procurement, personnel, and management formed a task group to develop a mock A-76 cost comparison for a typical VA hospital housekeeping function. Although hypothetical for this purpose, nearly all the data used in the cost study was taken from real-world VA operations, or was the task group's best estimate of what would be actual VA costs, staffing requirements, workload, etc.

This 1981 cost comparison revealed the in-house "bid" to be nearly $500,000 less than a prospective conversion to contract operation. This meant the housekeeping function would have remained "in-house," by a substantial margin, were this study "live."

On January 26, 1982, OMB modified Circular A-76 and the Cost Comparison Handbook by issuing Transmittal Memorandum 6 to OMB Circular A-76. The transmittal memorandum is attached for the subcommittee's information. These changes, along with further changes contemplated by the March 11, 1982, draft, were considered in a repetition of the original 1981 cost comparison. The result of the second study showed that contract conversion would now be the indicated decision under A-76. This revised cost comparison resulted in a $16,000 difference (in favor of the contractor), as contrasted to a $500,000 difference previously (in favor of continuing "in-house" performance).

The attachments better illustrate the results of both cost comparisons, and explain some of the assumptions which were made.

MAY 18, 1982.

To Chief Medical Director (10).
From Assistant Deputy Administrator for Budget and Finance (04).
Subject: Revision of A-76 Cost Comparison Handbook.

1. As requested by your Office of Administration (13A1), Jack Gartner (047D) has revised the August 1981 Mock A-76 Cost Comparison for Performance of VAMC Environmental Sanitation to illustrate the changes contained in the Draft Cost Comparison Handbook dated March 11, 1982.

2. Attached are: (a) Summary pages of August 1981 study; (b) summary page of March 1982 revised study; and (c) comparison of both studies.

3. Please note that this revision was completed solely by Mr. Gartner in a very tight timeframe and contains may assumptions about the intent of the changes in

the draft OMB Cost Comparison Handbook. It has not been reviewed by any other staff elements.

4. The net change between the two studies illustrates how OMB has tightened up the rules. In August 1981 In-House won the comparison by $494,998. In the revised study the Contractor wins by $15,976. Mr. Gartner took a very liberal view of the new rule that unless a overhead position would be downgraded or eliminated by contracting out, then it needn't be added to in-house cost. He completely eliminated the cost of General & Administrative Support as well as the cost of the Office of the Chief in the VAMC Building Management Service. If subsequent reviews would cause VA to include part of these costs, then the result would be the Contractor winning the study by a wider margin.

5. Please contact Jack Gartner for any further discussions.

CONRAD R. HOFFMAN.

Attachments.

PACKAGE 3

EXHIBIT 1

VAMC
COMPARATIVE COST OF IN-HOUSE AND CONTRACTING-OUT
PERFORMANCE OF ENVIRONMENTAL SANITATION

AUGUST 1981

CCH Page Ref.	Line #	Cost Element	FIRST YEAR	SECOND YEAR	THIRD YEAR	TOTAL	REFERENCE
		IN-HOUSE PERFORMANCE (CHAPTER III)	(Enter amounts Rounded to Nearest Dollar)				
12	1.	Direct Material	187,446	187,446	187,446	562,338	A-1
17	2.	Material Overhead	13,190	13,190	13,190	39,570	B-3
19	3.	Direct Labor	1,125,068	1,125,068	1,125,068	3,375,204	C-1
24	4.	Fringe Benefits on Direct Labor	291,221	291,221	291,221	873,663	D-1
28	5.	Operations Overhead	454,095	454,095	454,095	1,362,285	E-6
43	6.	Other Direct Costs	13,601	13,601	13,601	40,803	F-2
44	7.	General and Administrative Expense	114,654	114,654	114,654	343,962	G-1
49	8.	Inflation	Not applic.	87,971	180,341	268,312	H-1
50	9.	Total	2,199,275	2,287,246	2,379,616	6,866,137	
		PERFORMANCE BY CONTRACTING-OUT (CHAPTER IV)					
51	10.	Contract Price	1,640,294	1,783,000	1,866,800	5,290,094	I
52	11.	Transportation	-	-	-	-	J
53	12.	Contract Administration	65,612	71,320	74,672	211,604	K-1
53	13.	Government-Furnished Property	44,594	46,378	48,251	139,223	L-1
56	14.	Standby Maintenance	2,566	2,669	2,776	8,011	M-1
58	15.	Other Costs	225,152	234,158	243,614	702,924	N-1
58	16.	General and Administrative Expense	6,202	6,620	6,913	19,735	O-1
	17.	Total	1,984,420	2,144,145	2,243,026	6,371,591	

Exhibit 2

CCH Page Ref.	Line #	Cost Element	FIRST YEAR	SECOND YEAR	THIRD YEAR	TOTAL	REFERENCE
		OTHER CONSIDERATIONS (CHAPTER V)					
		ADDITIONS AND (DEDUCTIONS) TO IN-HOUSE PERFORMANCE					
		ADD:					
62	18.	Cost of Capital	39,541	39,541	39,541	118,623	P-1
67	19.	One-Time New Start Costs	-	-	-	-	Q
74	20.	Other Costs	-	-	-	-	R
		DEDUCT:					
74	21.	Other Costs	(-)	(-)	(-)	(-)	S
	22.	Total	39,541	39,541	39,541	118,623	
		ADDITIONS AND (DEDUCTIONS) TO CONTRACTING-OUT PERFORMANCE					
		ADD:					
62	23.	Cost of Capital on Gov't-Furnished Facilities	34,179	34,179	34,179	102,537	T-1
69	24.	Utilization of Government Capacity	103,424	-	-	103,424	U-1
67	25.	One-Time Conversion Costs	126,863	126,863	126,863	380,589	V-3
74	26.	Other Costs	-	-	-	-	W
		DEDUCT:					
74	27.	Federal Income Taxes	(16,403)	(17,830)	(18,668)	(52,901)	X-1
65	28.	Net Proceeds from Disposal of Assets (Annual Value)	1,622	1,622	1,622	4,866	Y-1
74	29.	Other Costs	(-)	(-)	(-)	(-)	Z
	30.	Total	249,685	144,834	143,996	538,515	
		MINIMUM COST DIFFERENTIAL (CHAPTER VI)					
75	31.	New-Start					AA
75	32.	Conversion	189,884	189,884	189,884	569,652	BB-2
		SUMMARY					
	33.	Adjusted Cost of In-House Performance (Line 9+Line 22 + 31)	2,238,816	2,326,787	2,419,157	6,984,760	
	34.	Adjusted Cost of Contracting-Out Performance (Line 17+Line 30+32)	2,423,989	2,478,863	2,576,906	7,479,758	
	35.	Cost of In-House Over (Under) Cost of Contracting-Out Performance (Line 33 - Line 34)	(185,173)	(152,076)	(157,749)	(494,998)	

VAMC—Performance of environmental sanitation using draft cost comparison handbook—March 11, 1982

In-house:	
1. Personnel cost	5,643,379
2. Material and supply cost	596,753
3. Other cost	45,127
4. Overhead:	
(a) OPS O/H	139,444
(b) M O/H	41,991
(c) G. & A	0
5. Additional costs	0
6. Total (lines 1–5)	6,466,694
Contract:	
7. Contract price	5,290,094
8. Contract administration	317,406
9. Additional costs	147,234
10. Subtotal (lines 7–9)	5,754,734
11. Deduct Federal income tax	52,901
12. Capital cost on disposal of assets	4,866
13. Other deductions	0
14. Subtotal (lines 11–13)	−48,035
15. Total (lines 10–14)	5,706,699
16. One-time conversion costs	179,681
17. Minimum cost differential (10 percent line 1)	564,338
18. Subtotal (lines 16 and 17)	744,019
19. One-time new start	0
20. Minus different new start	0
21. Subtotal (lines 19–20)	0
22. Sum of lines 6 and 21	6,466,694
23. Sum of lines 15 and 18	6,450,718
24. Difference of 22 and 23 (contract lower)	15,976

Comparison of August 1981 A–76 Study with draft cost comparison handbook—March 11, 1982

August 1981 In-house cost	6,984,760
Plus:	
Increase in fringe rates	[1] 339,048
Increase in inflation rates	[1] 67,291
Less:	
Elimination of G. & A. expenses	357,904
Elimination of chief's office from operation O/H	447,878
Cost of capital (wash item)	118,623
March 1982 in house cost	6,466,694
August 1981 contract cost	7,479,758
Less:	
Net decrease in contract administration	597,122
Allocation of G. & A. cost	19,735
Capital cost (wash)	102,537
Utilization of Government capacity	103,424

Net decrease in one time conversion cost	200,908
Net decrease in minimum differential	5,314
March 1982 contzact price	6,450,718

[1] The increase in fringe benefit rate from 26 percent to 34.496 percent and the inflation rate from 4 percent to 6 percent were the principal changes in the draft cost comparison handbook dated March 11, 1982. Transmittal memorandum No. 6 to Circular A-76 issued by OMB on January 26, 1982 addressed the other changes to the August 1981 study.

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
SUBCOMMITTEE ON HUMAN RESOURCES,
Washington, D.C., April 27, 1982.

Hon. G. V. (SONNY) MONTGOMERY,
Chairman, Committee on Veterans' Affairs,
Washington, D.C.

DEAR MR. CHAIRMAN: I would like to commend you for acting so expeditiously and holding a hearing on the implications of the draft revisions of OMB Circular A-76. If implemented, these revisions would result in the wholesale contracting of Federal work, regardless of potential increased cost to the taxpayer.

The push to contract out a large portion of the Federal workforce is potentially damaging not only in terms of cost, but also in terms of quality service. I share the concerns you have often stated, Mr. Chairman, about our obligation to provide quality care in our Veterans' hospitals. In too many instances, I am afraid, contractors are interested more in profit than in providing the kind of care our Veterans deserve.

I hope that you and the other members of your Subcommittee will join me in urging the President to reconsider this proposal. I believe it is important that every agency of the Federal government make decisions about contracting versus in house performance of work on the basis of cost effective delivery of quality products and services. I am enclosing a copy of the letter which I wrote to the President on this issue and ask that it be included in your hearing record.

I look forward to working with you in this area.

Sincerely,

GERALDINE A. FERRARO,
Chairwoman, Subcommittee on Human Resources.

Enclosure.

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
Washington, D.C., April 23, 1982.

Hon. RONALD REAGAN,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT: I am writing about the draft revision of OMB Circular A-76. I am very disturbed about the policy implication articulated in this draft. It will be clear if the revised circular is implemented that reducing the size of the direct Federal workforce regardless of the potential increased cost to the American taxpayer is the goal of your Administration.

Mr. President, when you ordered an across-the-board hiring freeze as your first official act, I protested that the public was misled into believing savings would result. The General Accounting Office has now said that such hiring freezes provide "an illusion of control," but in some cases actually increase government costs. I urge you not to perpetuate the public belief that savings automatically result from reducing the number of direct Federal employees. There will not be savings if reductions in the size of the Federal workforce result in the increase in the size of the "invisible government" of contractors.

As Chairwoman of the Subcommittee with jurisdiction over personnel levels and contracting-out, I agree with the position of previous administrations that cost comparisons should be performed to determine the most cost effective method of performing functions appropriately considered for contract performance. Functions which are inherently governmental in nature and unsuitable for contract performance must be identified and be performed by accountable Federal employees. The primary consideration for other functions must be providing services of the requisite quality at the least cost to the taxpayers.

I am appalled that the draft guidance I have reviewed appears to ignore the idea that taxpayers have a right to expect their government to provide services at the

lowest cost. It virtually requires that all in-house activities with personnel costs up to $500,000 be converted to contract by September 30 of next year regardless of the relative costs. It undercuts the solid and longstanding policy of cost effectiveness by requiring contracts for all new governmental requirements. It eliminates the requirement for maintaining and reviewing an inventory of commercial contracts to regularly determine whether functions can be performed in-house more economically. It overlooks the fact that in-house employees may have unique insight on how to perform in-house work more economically by excluding appeals based on inefficient in-house organizations.

In your 1983 budget submission you stated, "Federal procurement is a $130 billion-a-year business involving one-fifth of the Federal budget, more than 130,000 Federal employees and over 17 million contracting actions a year. Despite its magnitude, it is a process that has not received sufficient government-wide attention.

Yet, before appropriate attention can be focused on this area, your proposal would require a wholesale transfer of vital functions to contract operation in obvious disregard of cost effectiveness. In fact, the change you propose would take effect even before all agencies have fully implemented the current contracting policy. Such an abandonment of the cost effective functioning of government should not even be considered as we grapple with reducing the deficit you have proposed in your budget submission.

I urge you to instruct OMB officials to reexamine this proposal and ask that I be informed of the actions in this area.

Sincerely,

GERALDINE A. FERRARO,
Chairwoman, Subcommittee on Human Resources.

MARCH 23, 1982.

Hon. ROBERT NIMMO,
Administrator of Veterans' Affairs,
Veterans' Administration, Washington, D.C.

DEAR MR. ADMINISTRATOR: I have been advised by several sources that the Office of Management and Budget has made a proposed revision to OMB Circular A-76, and has submitted a draft of the revision to various departments and agencies, including the Veterans' Administration, for comments.

As you know, this Committee is very concerned with the possible undesirable effects that contracting out under Circular A-76 may have on the quality of health care delivered in VA hospitals. Testimony received during Committee hearings last year indicated that in most cases conversion to contract for hospital services did not enhance the quality of service and, in fact, degraded that service.

It is my understanding that OMB's new draft revision proposes drastic measures to dictate conversion to contract for those services with 26 or less employees without requiring cost comparison studies to demonstrate the cost effectiveness of such conversions. The OMB proposal would also mandate that new requirements be satisfied by contracting out. It appears that these new revisions to the Circular, which totally ignore the cost comparison process, constitute a capricious and irresponsible action by OMB in not requiring a determination to establish the cost effectiveness of conversion to contract for certain services.

During the development of your comments on the draft revisions to the Circular, we hope you will keep in mind the concerns of this Committee regarding OMB Circular A-76, as well as the remarks set forth in this letter. We would also ask that you keep this Committee informed of your plans for future implementation of the Circular. In this regard, would you please provide the Committee with a list of those DM&S activities, including FTEE involved, with 26 personnel or less which would come under the proposed A-76 provision which dictates conversion to contract without a cost comparison study.

As a separate issue, it is our understanding that the VA Inspector General has a team from his office conducting an A-76 cost comparison study of the Dietetic Service of the VA Medical Center, Denver, Colorado. While we recognize that the Inspector General does not come within the jurisdiction of Section 601 of Public Law 97-66, we question the authority of the Inspector General to conduct this kind of activity. We are especially concerned with his distraction from his primary duty to uncover waste, fraud and abuse within the agency, and the fact that he has indicated his present resources are inadequate to perform the duties of his office. We would ap-

preciate your explanation of the Inspector General's authority to engage in cost comparison studies of activities within the Department of Medicine and Surgery.

Sincerely,

G. V. (SONNY) MONTGOMERY,
Chairman.
JOHN PAUL HAMMERSCHMIDT,
Ranking Minority Member.

VETERANS' ADMINISTRATION,
OFFICE OF THE ADMINISTRATOR OF VETERANS' AFFAIRS,
Washington, D.C., April 20, 1982.

Hon. G. V. (SONNY) MONTGOMERY,
Chairman, Committee on Veterans' Affairs,
Washington, D.C.
House of Representatives,

DEAR SONNY: I am pleased to provide the information you and Honorable John Paul Hammerschmidt have requested regarding the potential impact that the current Office of Management and Budget draft revision to OMB Circular A-76 will have upon the Department of Medicine and Surgery. An interagency task force formed by OMB, on which the VA is represented, has been working since February 1, 1982, to revise both the basic A-76 circular and the Cost Comparison Handbook. The provisions which you describe are the thresholds below which in-house commercial activities should be converted to contract without a cost comparison. These proposed thresholds do not represent the consensus of the task force but were instead developed by the Office of Management and Budget. It should be emphasized that the draft revisions have not been finalized for official agency or public comment.

The draft thresholds under consideration are as follows:

"(1) Thresholds—

"(a) Activities with less than 10 FTEs shall be converted to contract performance as soon as practicable, but no later than September 30, 1983, without a cost comparison.

"(b) Agencies should not incur the delay and expense of conducting cost comparisons to justify in-house performance of commercial activities with 10 to 25 FTEs. Such in-house activities should be converted to contract as soon as practicable, but no later than September 30, 1983, without a cost comparison. However, if an agency determines inadequate competition exists, a cost comparison may be conducted with the written approval of a senior agency official.

"(c) Activities exceeding 25 FTEs must undergo a cost comparison to justify continued in-house performance unless the agency head or designee waives the requirement for a cost comparison in accordance with paragraph 9.a.(2).

"(d) The head of an agency is authorized to waive cost comparisons for commercial activities over 25 FTEs and convert such activities to contract performance when it is determined in writing and approved by the agency head or designee that:

"(i) Based on the results of recent cost comparisons of like activities, GAO report audit findings, etc., the in-house operation does not have a reasonable expectation of winning the competition and, therefore, conduct of a cost comparison would not be necessary or cost efficient.

"(ii) Contracting out of the activity would have no adverse effect upon the employees.

"(e) If it can be substantiated by cost comparisons of like activities, GAO report audit findings, etc., that there is not a reasonable likelihood that a conversion to contract will result from a cost comparison, an agency head or designee may request a waiver from performing a cost comparison from OMB."

The proposed thresholds would clearly eliminate the discretion to perform cost comparisons for activities encompassing less than 10 FTEs. Latitude does exist to study activities between 10-25 FTEs if it is determined that there is inadequate competition. This language might be flexible enough to allow cost comparisons as a matter of policy. However, the language contained in Section 601 of Public Law 97-66 generally proscribes cost comparisons and it would appear that conversion to contract would be required unless inadequate competition could be documented.

The proposed A-76 revision includes a provision recommending that activities be consolidated for cost comparison purposes. Such consolidations would reduce the instances of conversions to contract without cost studies. I am concerned, however, that our consolidating functions would have the appearance of excluding our current activities from scrutiny since Public Law 97-66 precludes the cost comparison

process in the Department of Medicine and Surgery unless funds are specifically appropriated for that purpose. We will, of course, fully consider consolidation in other departments and staff offices.

As requested, I have enclosed a tentative list of current functions which would come under the proposed A-76 provision requiring conversion to contract without a cost study. This list is based upon an August 1979 report. The Chief Medical Director, with my approval, provided as part of Senate testimony, a more concrete definition of what constitutes direct medical care and thereby excluded from A-76 review. This new definition includes several functions which had previously been considered susceptible to A-76 review. For your information I have enclosed this new definition.

I have not requested a cost comparison study of the Dietetic Service at VA Medical Center Denver, Colorado. The Dietetic operation, including food service, has been defined as medical care and therefore currently excluded from the provisions of the circular. Our Inspector General's Kansas City office will be meeting with Department of Defense auditors in Denver in order to review the Department of Defense procedure for auditing A-76 studies. The purpose is merely to gain insight into the process in order that the office is prepared to audit cost comparisons which will be conducted in other departments and staff offices and any cost comnparison studies in the Department of Medicine and Surgery which may be authorized as provided in Public Law 97-66. In any event, it is not currently intended that the Inspector General be responsible for conducting A-76 studies. However, providing audits of completed studies will be within the purview of the Inspector General.

We hope our response addresses your concerns, and we appreciate the opportunity to clarify our position on the implementation of OMB Circular A-76. We have furnished the identical response to Honorable John Paul Hammerschmidt.

Sincerely,

ROBERT P. NIMMO, *Administrator.*

Enclosures.

APRIL 29, 1982.

Hon. BARNEY FRANK,
House of Representatives, Washington, D.C.

DEAR BARNEY: Thank you for your letter of April 27th, concerning Office of Management and Budget Circular A-76.

Your letter will be made a part of the record of the Subcommittee on Oversight and Investigations' hearing on that date.

As you are aware, OMB is proposing revisions to the Circular which would make contracting out much easier and disregard costs. We had asked that Mr. Donald E. Sowle, Administrator of the Office of Federal Procurement Policy at OMB, testify at our April 27th hearing, but he refused to appear.

I shall do everything possible to ensure that OMB does not circumvent the intent of Congress as set forth in Public Law 97-66, and have directed the Committee staff to explore the most appropriate legislative reedy to deal with the unsatisfactory proposed revisions to OMB Circular A-76.

Sincerely,

G. V. (SONNY) MONTGOMERY, *Chairman.*

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., April 27, 1982.

Hon. G. V. (SONNY) MONTGOMERY,
Chairman, Subcommittee on Oversight and Investigations, Washington, D.C.

DEAR MR. CHAIRMAN: I am submitting this letter for the record in your Subcommittee's hearings on Contracting-out in VA Facilities. I appreciate your assistance in including it in the record.

I understand that the Subcommittee has held a number of hearings on this very vital issue and I applaud your concern. I am confident that the Subcommittee will, at the conclusion of these hearings, act to maintain the highest standards of care for veterans at VA facilities, particularly VA health care facilities.

Mr. Chairman, I believe that the federal government has allowed contracting out to get out of control. One only need to look at the inability of the Office of Management and Budget to give accurate figures as to the full extent of contracting out to know that this lack of control exists. Compounding this problem is what I believe to be inadequate standards and procedures for assessing when contracting out ought to be utilized.

The effect of improper decisions in this area has obvious negative impact on federal employees, who have seen their morale devastated by the current Administration over the past year on a number of fronts. I fear that the Reagan Administration, in the guise of "better management", will revise the OMB Circular A-76 procedures in a manner which help reduce the federal workforce even further. Such surrepticious attempts must be resisted by Congress.

I am also very concerned about the impact that revised procedures will have on federal employee veterans who work in the VA system. While the A-76 procedure does mandate that contractors give preference to veterans, this preference is by no means a guarantee of a job and even if a job does develop, pay and benefits are likely to be mush lower. As Daniel J. Kearney, AFGE Vice President, testified to the Subcommittee last year, in a typical big city VA Hospital well over half of the employees who work in housekeeping, maintenance, and dietetic services department are veterans who would be adversely affected by a decision to contract out those services. I am sure the Committee will find that many other examples of this type of disproportionate impact on veterans exists throughout the VA system.

Mr. Chairman, in conclusion I would just like to point out what I think should be fairly clear: that as long as private concerns are profit motivated (which is certainly a legitimate goal), there seems no reason that non-profit governmental agencies should not be able to do most tasks in a less expensive manner as long as sound management techniques are practiced. Rather than making vague and unsubstantiated accusations that federal employees cannot do work in a cost-effective manner, the Administration should make certain that its management house is in order and that it is not contracting out as an excuse to rid itself of many in the federal workforce.

I appreciate this opportunity to present my views.

BARNERY FRANK.

STATEMENT OF ROBERT E. LYNGH, DIRECTOR, NATIONAL VETERANS AFFAIRS AND REHABILITATION COMMISSION, THE AMERICAN LEGION

Mr. Chairman and Members of the Subcommittee, the American Legion appropriates the opportunity to submit to the Subcommittee, its views on the most recent proposed revision of OMB Circular A-76.

At its 1981 National Convention, The American Legion adopted Resolution No. 297 (District of Columbia), copy of which is attached. Resolution No. 297 placed The American Legion in opposition to the contracting out of those services deemed essential to the provision of care to sick and disabled veterans in VA medical centers and clinics. At the time Resolution No. 297 was adopted, the Office of Management and Budget had ordered VA to undertake a massive series of cost comparisons, of practically all activities within each of the medical centers, preparatory to contracting out. In conformity with the order, VA had commenced 4000 cost comparison studies. The cost of these studies in dollars and in manpower utilization were exceedingly high.

The American Legion complained about these activities on the basis of our judgment that the cost comparisons themselves—even prior to any actual contracting out—were having an adverse effect on delivery of care to veterans. Dollar costs, detailing of manpower needed elsewhere, and sagging morale among VA staff; all of these things were affecting actual delivery of care. This process merely confirmed our belief that pursuit of this initiative was not going to work toward the best interests of veterans receiving care from the VA medical care program.

Fortunately, Congress, through this Committee, responded to the critical situation that was developing in connection with the implementation of OMB Circular A-76. Section 601(b)(5) of Public Law 97-66, the Veterans' Disability Compensation, Housing and Memorial Benefits Amendments of 1981, prohibited use of funds appropriated for medical care and associated activities to carry out cost comparison studies for Circular A-76. The American Legion applauded and appreciated that action, and commends Congress, and especially this Committee for it.

Now it appears the Office of Management and Budget is not yet through with this matter, and still seeks to impose contracting out on the Veterans Administration Department of Medicine and Surgery. Apparently the functionaries at OMB were not impressed by the intent of Congress, as clearly indicated by the aforementioned language in PL 97-66.

In reviewing the proposed revision of Circular A-76, our attention has been drawn particularly to the language of 9a(1)(a) and (b), which provides that "Activities with less than 10 FTEs shall be converted to contract performance as soon as practicable,

but no later than September 30, 1983, *without a cost comparison* (italic provided)," and, under (b), "agencies should not incur the delay and expense of conducting cost comparisons to justify in-house performance of commercial activities with 10 to 25 FTEs. Such in-house activities should be converted to contract as soon as practicable, but no later than September 30, 1983, *without a cost comparison.* (Italic provided)"

Were these provisions to be promulgated and implemented, the results in the VA medical care program, in the judgment of The American Legion, would be devastating. Throughout the 172 hospital VA system there are a wide variety of health care delivery activities that employ less than 26 FTEs. All the evils the Legion perceived as attending the initial intent of Circular A-76 would return to impact the system, possibly without recourse by the agency.

Let us state again, for this Subcommittee the basic reason The American Legion is opposed to the implementation of Circular A-76 by the VA Department of Medicine and Surgery.

Provision of health care, first to the service disabled, and then to sick and disabled veterans who qualify for such care under laws passed by Congress, is a sacred obligation of the Government of the United States. Responsibility for delivery of that care must not, and cannot be entrusted to non-government contractors who do not share the legal and moral obligation to veterans that is imposed on the VA. Private contractors will not bring to their contracted obligations the same sense of responsibility that is residual in VA. Lack of performance will lead to contract disputes that may or may not be satisfactorily resolved. Responsiveness to constituent representations will be absent from a contractor's performance. It cannot be guaranteed that strikes will not occur somewhere, sometime within the system. A strike by a private contractor within the system in any of a multitude of health care delivery activities could literally jeopardize the health and even the life of a patient. One instance of such an eventuality would be sufficient to condemn the entire practice of contracting out—but then it could well be too late.

It is the position of The American Legion that delivery of health care to sick and disabled veterans, as provided for in title 38 of the United States Code, is the total responsibility of the Government of the United States through the Veterans Administration. That responsibility cannot be ssigned to any other instrumentality, particularly one of a non-governmental nature.

It is the petition of The American Legion to this Subcommittee, and through it to the full Committee and to the Congress that if the Office of Management and Budget cannot be persuaded to exempt the Department of Medicine and Surgery from compliance with Circular A-76, that Congress will, in such circumstance accomplish this goal through approprate legislation.

As it always has in the past, The American Legion puts its trust in the Congress of the United States to protect the welfare of the nation's veterans, and in this instance of those who are sick and disabled.

SIXTY-THIRD ANNUAL NATIONAL CONVENTION OF THE AMERICAN LEGION, HONOLULU, HAWAII, SEPTEMBER 1, 2, 3, 1981

Resolution: No. 297 (District of Columbia).
Committee: Veterans Affairs and Rehabilitation.
Subject: Oppose Veterans Administration Department of Medicine and Surgery contracting out of services deemed essential for delivery of integrated quality medical care to eligible veterans.

Whereas, Office of Management and Budget (OMB) Circular A-76, dated March 29, 1979, as revised, established for Federal agencies "Policies for acquiring commercial or industrial products and services needed by the Government"; and

Whereas, the present Administration has instructed all Departments and Agencies to proceed with implementation of Circular A-76; and

Whereas, it has now become clear that Circular A-76 will impact seriously on the Veterans Administration Department of Medicine and Surgery, in that—

VA has now commenced 4,000 studies of activities within DM&S with a view to contracting them out commercially;

These 4,000 studies will require an estimated 1,000 man years of work to complete;

Cost to VA in implementing the required A-76 studies is already in the millions of dollars of manpower and travel;

When commercial contracts for services in VA Medical Centers are entered into, VA estimates such contracts will initially affect 37,000 employees, of whom 37 percent will be veterans; and

Whereas, it is the judgment of The American Legion that the commercial contracting out of services provided to veterans by VA Department of Medicine and Surgery will adversely affect the quality and timeliness of care delivered to sick and disabled veterans; and

Whereas, The American Legion has opposed and continues to oppose those efforts of the Office of Management and Budget that tend to fractionate the Veterans Administration as the sole Federal agency responsible for the delivery of quality hospital and medical services to the nation's veterans; now, therefore, be it

Resolved, by The American Legion in National Convention assembled in Honolulu, Hawaii, September 1, 2, 3, 1981, that The American Legion shall vigorously oppose Veterans Administration contracting out of those services or activities deemed essential for retention in Veterans Administration medical care facilities in order to insure the timely delivery of quality health care to the nation's eligible veterans.

STATEMENT OF R. JACK POWELL, PARALYZED VETERANS OF AMERICA

Mr. Chairman and Members of the Subcommittee, I wish to thank you for this opportunity to express the continuing concern of Paralyzed Veterans of America regarding Office of Management and Budget (OMB) policies which affect the Veterans Administration. PVA is grateful to this Subcommittee and the full Committee for its leadership and diligence in conducting an investigation of the proposed changes to the existing OMB Circular A-76. PVA is especially concerned that these changes have been introduced after the Congress passed Public Law 97-66, the "Veterans' Disability Compensation, Housing, and Memorial Benefits Amendments of 1981," Just last Session. This legislation included language which prohibits use of VA Department of Medicine and Surgery appropriations for A-76 studies unless authorized by Congress.

Mr. Chairman, this year, as last, PVA opposes any forced contracting requirements imposed upon the VA. PVA is especially concerned with the affect of forced contracting upon the VA health-care system. This concern reflects PVA's members, all of whom are veterans who have experienced spinal cord injury or dysfunction. PVA remains concerned about the actual intent of implementing A-76. OMB in proposing application of A-76 to the VA health care system, for example, seeks solely to lower budget outlays. PVA, as a veterans service organization seeks to have the VA provide veterans with the maximum number of high-quality health-care services possible. Because there is limited funding available in any Congressional appropriation, PVA seeks to have the VA save operating costs whenever reasonably possible. We seek both efficiency and effectiveness, goals similar to those expressed by OMB but also significantly different from its concentration purely on reducing the cost of operations. PVA sees people who have incurred injury or disease as a result of service to their country where OMB sees only aggragate numbers and dollars.

In PVA's view two aspects of Circular A-76 must be examined; its likely effects on the VA's ability to care for veterans health and medical needs and its likely effect on the cost of these services to the American people. There are other areas which need examination, also, and we will attempt to discuss them briefly after looking at the quality of VA services and their cost.

Americans have always understood their obligations to the Nation's veterans and have always sought to fulfill that duty. We are a Nation of citizen soldiers, and unlike a country which hires mercenaries for protection, we rely on ourselves to serve the Nation in its times of need. The Constitution of the United States has established it as a basic principle that one of the federal government's functions is to provide for the national defense: veterans medical and health care services are part of the cost of national defense in our society. Veterans health care, as provided through the VA's Department of Medicine and Surgery (DM&S), is an appropriate area of responsibility for the federal government, and this is a permanent duty which exists even if an era is philosophically dedicated to reducing the role of the federal government.

As noted, PVA's goal is for eligible veterans to receive through the VA the maximum number of quality health-care services, even if OMB does not share our goal. We must look closely at the types of services which will be available, should the VA rely increasingly on contractors for services now provided by VA employees.

The VA has relied on contract services whenever it has found that these services are superior to those which the VA could provide, or whenever it has found that contractors can provide services of satisfactory quality for less cost. For example, the VA has concluded that it is less expensive to contract with local ambulance op-

erators than to attempt to provide these services in-house. And, the VA has had to contract for use of highly sophisticated medical-care equipment whenever VA facilities do not contain them. In short, the VA has always attempted to consider the needs of veterans, the cost of services, and the availability of care. Through years of continuous operations and practical experience, the VA has learned, generally, how to weather funding restrictions and at the same time fullfill its obligations to eligible veterans.

A sudden shift to greater contracting does not reflect the tried and proven approach to contracting which the VA has developed. Perhaps we should learn from the Department of Defense, which moved rather suddenly toward the replacement of many in-house functions by contract services. In 1979 Congress restricted DOD's ability to have private contractors provide services and last year these limitations became permanent. (Public Law 96-107 and Public Law 96-342) Section 502 of Public Law 96-342 (the "Department of Defense Authorization Act of 1981") states: "No commercial or industrial type function of the Department of Defense that on October 1, 1980, is being performed by Department of Defense personnel may be converted to performance by a private contractor." This Section is qualified, however, and the Secretary of Defense may use contract providers, but only if contractors can maintain suitable standards and only after the Secretary has reported to Congress that he intends to seek contracts for specified services. (These are basically the same guidelines which control the Administrator of Veterans Affairs without implementation of OMB Circular A-76.) In short, Congress has found that reliance on private contractors to perform public functions has warranted tighter controls and closer examination, if the military is to be able to respond quickly to emergencies and if personnel are to understand their duties and work as a team.

The Veterans Administration moved toward increased reliance on contract providers, and the quality of results has been mixed. As noted, the VA relies on contractors for services which are used irregularly and thereby do not warrant a standing VA labor force to provide them. Or, the VA contracts for needed specialized equipment and services when Congress has determined that this reliance is preferable to appropriating greater funding so that the VA can make long-term investments in capital and talent. Some contracted services have been fiscally efficient and effective. Others have been medically effective but not cost efficient. Finally, some have been less than satisfactory in point of both cost and productivity.

In 1976 the National Academy of Sciences (NAS) studied the VA health-care system and found it deteriorating. NAS proposed that either the VA cease its health-care functions or, alternatively, that emphasis be given to better funding and management so that the VA could provide veterans with care at the standards which have been achieved by the medical arts and sciences and which are available in other health-care systems and facilities.

NAS specifically studied the VA prosthetics program. Following World War II the VA assumed a role of leadership in prosthetics, and it earned an international reputation for excellence through its research, development, and clinical application in the field. The National Academy of Sciences found in 1976, however, that this excellence had disappeared.

There are three reasons noted by the NAS study for this loss of excellence in prosthetics; insufficient appropriations, fragmentation of VA managerial control, and increased independence of private contractors.

The VA provided the foundation for private contractors to build upon and improve the whole area of prosthetics, and the VA has continued to serve contractors as a reliable major buyer of products. But, contractors' failure to achieve high standards on a consistent basis is well-attested. Employers have failed to supervise their workers and the VA must pay more-first the VA purchases the devices only to have to pay the supplier to rectify defects arising from shoddy workmanship. Of more direct importance to the well-being of severely disabled veterans is the fact that these contractors have shown little or no creativity, largely because research and development would reduce their profits.

During the last Session of Congress the House Committee on Veterans' Affairs conducted hearings on the likely effects that greater contracting will have on the VA health-care system. One week later, on October 27, 1981, the Honorable Ronald Mottl introduced legislation (H.R. 4851) "to amend title 38, United States Code, to exempt the Department of Medicine and Surgery in the Veterans' Administration from any Office of Management and Budget policy or directive prescribing procedures for contracting-out commercial or industrial functions."

Non-VA hospital administrators, health-care professionals, hospital employees, and suppliers of goods and services testified at the hearing, and the great preponderance of them illustrated the problems they have faced and the harm which has

resulted to patients when medical systems have relied on contractors for services such as hospital housekeeping services, food preparation and delivery, and linen services.

PVA will not reiterate the examples given during the hearing, but these knowledgeable witnesses reported that too often various hospitals have found themselves paying considerably more for sub-standard sanitation levels, cold and/or improperly prepared food, and shortages of clean linen. Concededly opponents of contracting can provide an infinite number of bizarre stories to illustrate where contracting has failed, just as supporters of the provisions of A–76 can offer an equal number of examples to illustrate that contractors would provide services more cheaply than do VA employees. But, one does not have to be a sophist to argue that the preponderance of the evidence detracts from the viability of imposing the provisions of Circular A–76 on the VA's Department of Medicine and Surgery.

A procurement and supply expert from the Veterans Administration testified before the House Committee on Veterans' Affairs, and he pointed out that the VA already relies on contractors, but all such decisions "should be based on considerations other than just cost factors, such as the availability of satisfactory service and the relative isolation of many of our facilities with the concomitant nonavailability or limited availability of prompt services to maintain critical operations." OMB seems to be considering just cost and ignoring the needs of local VA facilities and particular hospital patients.

In addition to harming veterans health and medical care by making blanket demands without considering the needs of individual facilities, programs, and patients, PVA sees in Circular A–76 other inevitable harms which are likely to arise, should the VA's Department of Medicine and Surgery comply with the Circular.

First, the OMB Circular would undermine hospital administrators' control over their facilities and personnel. Contract personnel answer to their employers and not to the parties having work done. Whenever problems arise the administrators would have to consult with the contractor who either would consult with employees' labor union representative or the employee, depending on whether or not workers are unionized. Here would be needless delay and aggravation for managers and, meanwhile, hospital patients would suffer. Second, contractors' employees may be unionized and can strike. In the event of strikes either patients' needs would not be met or health-care professionals and managers would have to perform contract functions. (The AFL–CIO has opposed A–76, and Congress recognized through Public Law 96–330 that health-care professionals are already overworked.) Either of the possibilities noted are unsuitable: patients are in hospitals for the obvious reason that they are not well, and it is asking a great deal of a sick person to wait until food or linen or medications can be found. Labor strikes occur most often when workers are forming their bargaining units and soon after employers restructure and/or expand their operations. Strikes also occur when labor agreements are being re-negotiated.

It is anticipated that contractors will attempt to accomplish their tasks with fewer employees than the VA uses, because reducing labor costs is a major way to increase the employer's profits. Under these circumstances several possibilities exist: the services would be provided less completely and more slowly; contractors would hire additional workers and increase their charges to the VA; contractors employees will continue to be overworked, will feel beleaguered, and will conduct unfair labor practice strikes. Again, hospital patients suffer.

Third, employees of contractors work only as hired help and not as members of a team. Unlike VA employees, they are not likely to have much interest in the VA health-care system outside their particular assignment areas. For them it probably would not make much difference whether they were cleaning linen for hospital patients or for a barber shop, or preparing food for sick people or airline lunches—the same contract employee would likely work on VA and non-VA assignments within the same day or week.

Fourth, even if a provider's period of contract functioned smoothly, the contract must be reviewed upon expiration. The President of Huntington Laboratories, Inc., a for-profit manufacturer and seller of institutional housekeeping products, recently reported on his observations of such events: the hospital must accept the contractor's renewal terms or be without services, and each contract renewal is tantamount to a strike. The hospital must "magically produce—instantly—a fully trained staff" to fill the void, and such a staff would not exist should the provisions of Circular A–76 implemented in the VA's Department of Medicine and Surgery.

As noted, PVA wants to consider both the quality of health care and the cost of it. The factors previously mentioned would undermine the quality of VA care, should the provisions of Circular A–76 be implemented.

Cost effectiveness itself speaks against increased reliance on contractors as envisioned by proponents of Circular A-76. On October 8, 1981, Stars and Stripes published what it described as analysis of a confidential OMB memo. The memo outlined budget reductions sought by the Administration in the VA's budget for fiscal years 1982, 1983, and 1984. PVA considers the information concerning proposed reductions to be reported accurately, in part, because the ones noted for fiscal year 1982 were sought by the President and OMB during budget considerations earlier last year.

It should be emphasized that one of the Administrations's goals reported in Stars and Stripes was to eliminate 3,844 employees from the VA Canteen Service, but contracting out would have cost $1,793,000 more in fiscal year 1983 and $1,915,000 more in fiscal year 1984. PVA recognizes that the ultimate goal behind such a measure is to realize long-term saving by not having to pay these employees retirement benefits. And, canteen services are not as urgent a need for hospital patients as some of the areas covered by Circular A-76. But, there are anticipated increases is contract costs, and Congress cannot control these increases as directly as it can VA employee pay raises. Also, the greater cost of contracting will be felt immediately, a fact which will consume the funds which Congress regularly provides for veterans health and medical services.

The Honorable Tom Harkin (D-Iowa) stated in opposition to applying Circular A-76 to the VA health-care system, that historically once such contracts are in place the rate of increase in approximately 25 percent between the first and second years. He added that "without a test program, there is no justification for saying that contracting out will save money."

OMB is in the budgeting business, and it does not consist of health-care experts. And, even in budgeting matters we should monitor closely OMB's policies which so directly affect veterans health. In rushing toward greater contracting the Air Force Academy experienced some adverse results when its statement of work greatly underestimated the contractor's assignments. As a result, the three-year contract price had to be increased by about $708,000. PVA wonders if OMB, in setting guidelines for the VA, has considered the cost of such time-consuming tasks as preparing specialized meals for patients on controlled diets. It is fortunate that the events at the Air Force Academy concerned only the cleaning of floors in the field house and similar buildings.

During the past few Administrations, and now during this one, OMB has sought to destroy the VA as a viable, independent health-care provider for veterans. The assaults have not been for purely economic reasons and distinguished Members of this Committee have worked to thwart the destruction of the VA. PVA remains forever grateful for your loyal support, and we understand that even though you have consistently led the entire Congress to appropriate needed funds for the VA, OMB has at times withheld those health-care funds.

Mr. Chairman, PVA is especially concerned about some specific changes in the proposed A-76 Circular. Section 9 (cost comparison) indicates that activities with less than 10 FTEs shall be converted to contract performance as soon as practicable, but no later than September 30, 1983, without a cost comparison. Those activities with 10 to 25 FTEs also will be converted to contract without a cost comparison unless inadequate competition is determined to exist by the agency concerned. Activities above 25 FTEs are subject to waiver of cost comparisons by "senior agency officials". PVA views these modifications as indicative of the actual intent of those who would force additional contracting on the VA. Cost is no longer a justification. This expressed disregard for the cost of contracting supports our earlier expression of concern about the actual intent of OMB.

PVA's concerns about the intent of A-76 are further justified by Section 8 of the proposed changes. This section addresses delay or disruption of agency missions and avoidance of unnecessary or overly restrictive specifications in contracts. Specifically the performance requirements shall not exceed the level of performance expected of the in-house government workforce.

PVA believes that the intent of the proposed changes are not in the best interest of the veteran, the VA, the Federal Government, or the taxpayer. Application of forced contracting under the proposed guidelines will result in higher costs for less services. The ultimate burden will be borne, once again, by those veterans who have answered their nation's call for service. PVA urgently requests that the full Committee pass H.R. 4851, introduced by Representative Mottl as it is written or as amended to further restrict application of OMB Circular A-76 to the Veterans Administration.

Mr. Chairman, this concludes PVA's statement and we would be happy to respond in writing to any questions you may have.

ANSWERS TO QUESTIONS SUBMITTED TO THE VETERANS' ADMINISTRATION BY CHAIRMAN MONTGOMERY

Question 1. We understand the VA was represented on the OMB Task Force which develped the A-76 draft revision. As of April 27th, do you have any information about changes which may have been made to the draft revision of Circular A-76 as it pertains to FTEE thresholds?

Answer. We know of no changes to the proposed draft revision since April 27, 1982.

Question 2. The management review of in-house activities for cost effectiveness is often the most important part of the A-76 process because the savings realized often make the difference between retaining an activity in-house and contracting out.

What guidance have you given to your managers about these reviews?

Have you given any training on how to conduct these reviews?

What have you done to encourage cost containment and cost reduction?

We know of the outstanding cost containment program of the Dietetic Service in DM&S, but we have yet to hear of any similar efforts by other Va officials. Would you comment on that?

Answer. The VA's basic implementing directive, VA Circular 00-81-32, dated July 30, 1981, emphasizes that management reviews should be completed as a part of a unit's preparation for the cost comparison competition.

Although no formal training in management reviews has been conducted, the subject was discussed in depth at both our Kansas City and St. Louis training sessions last year which involved several local management levels.

Besides the formalized program under development, our current directive and supplemental guidance have emphasized the need to streamline existing functions. This process is essential if our functions will be competitive in an A-76 cost comparison.

The Department of Medicine and Surgery is planning to organize a formal cost containment program, suggesting both general and specific methods of effecting more efficient, streamlined operations. We hope to model this program after the cost containment effort of DM&S's Dietetic Service. To the extent appropriate, other departments and staff offices will likewise institute such a program.

Question 3. The adverse effects (downgradings and separations) of contracting out on current employees can be reduced by hiring freezes in activities not subject to review. These freezes can be used to retain vacancies which will provide placement opportunities for surplus employees. Has the VA made any plans along these lines?

Answer. Departments of Memorial Affairs and Veterans Benefits have advised us that they have not yet instituted hiring restrictions because they believe that it is too far in advance of A-76 implementation and that there is a need in the meantime to continue staffing ongoing activities. Furthermore, there appears to be little likelihood for such internal placement of individuals potentially affected in these two departments.

Our Office of Procurement and Supply is using attrition as well as placing employees in functions under study into vacant positions. It is hoped in these ways that the ultimate impact upon employees can either be dramatically reduced or eliminated altogether for the smaller functions within our depots. No personnel actions have been taken in conjunction with our Office of Data Management and Telecommunications since we are in the initial stages of implementation planning at our data processing centers. All DM&S activity ended with enactment of PL 97-66.

Question 4. The A-76 cost comparison process is long and complex. As previously noted, we are particularly concerned about the quality of the management reviews that precede the cost comparisons We know that you have provided some training in the cost comparison process to some DM&S managers.

Are the managers who will be conducting the cost comparisons the same individuals who will be conducting the management reviews for cost effectiveness?

If so, do you believe that these managers will have sufficient time to conduct high quality management reviews if they are concurrently trying to understand and implement the cost comparisons?

Answer. Generally the front line managers of the function under study possess knowledge critical for both a good management review and effective and accurate in-house cost estimating. These individuals will be involved in both the management review and the cost comparison. Other specialty staff (fiscal, engineering, supply, management analysis, and personnel) will be assisting managers in either the cost comparison or management review but not both.

The managers who will be conducting management reviews and assisting in the cost comparison process will have adequate time to do both. The management re-

views precede the cost comparison. That chronology is delineated in A-76 and reemphasized in VA internal directives. The managers' insight gained in the management reviews will actually benefit the subsequent identification of cost elements in the in-house cost estimating.

Question 5. A copy of the definitions of "Direct Medical Care" is attached.[1]

Has the definition changed at all since that time?

Answer. No.

Have you been approached by any other government official concerning the need to amend the definition?

Answer. No.

Question 6. Please provide the Subcommittee with a detailed report on your A-76 work involving the DM&S Dietetic Service. We are especially interested in reviewing any report which was made to you regarding A-76 and the Dietetic Service.

Answer. The Department of Medicine and Surgery's Dietetics Service has not undertaken any study of the effect of A-76 on the Service. The only report which is related to this issue references Dietetic Service's recent work to contain program costs. This cost containment program, while motivated by OMB Circular No. A-76, is only coincidentally related in its effect on dietetic operations. A copy of the report is enclosed for your information.[2]

Question 7. The Subcommittee understands that the Inspector General's staff recently carried out an A-76 related analysis of the Veterans Canteen Service. Please provide the Subcommittee with a copy of the report of that analysis.

Can you explain your logic for undertaking such a review?

Was this review in keeping with your legal mandate for uncovering fraud, waste, abuse, and mismanagement, or was it related to your staff becoming more proficient in A-76 work?

Answer. The Office of Inspector General has not made an A-76 related analysis of the Veterans Canteen Service. However, our audit efforts to date in the Veterans Canteen Service have consisted primarily of reviews dealing with the efficiency and effectiveness of operations. This work was accompanied as part of our routine reviews of Veterans Administration activities.

Question 8. The Subcommittee understands that the Inspector General's work on A-76 in Denver was associated with a desire to become proficient in auditing the contracting-out process.

Is this an essential function of the VA Inspector General?

Do you anticipate A-76 auditing will occupy a substantial proportion of IG resources in fiscal years 1982 and 1983?

Please advise the Subcommittee of your anticipated resource investment on A-76 auditing for both fiscal years.

Answer. The Office of Inspector General does not have a defined role in the VA's implementation of OMB Circular A-76. In fact, it appears that the Inspector General Act of 1978 precludes an operational role. However, the Office of Inspector General is responsible for oversight of the Agency implementation of the A-76 process. We anticipate that the Inspector General will perform post-cost-comparison audits and management and compliance reviews as an additive mission prescribed by law.

At this time we are unable to project the proportion of Inspector General resources needed in fiscal years 1982 and 1983 for A-76 oversight. By the nature of the work required in the oversight role, resource projections will be fully dependent on how many, degree of complexity and type of A-76 reviews accomplished by the Agency. However, a review of another audit agency's involvement indicates that significant audit resources are required.

Question 9. Did the Office of Management and Budget provide the VA with the rationale behind these proposed revised thresholds?

Answer. The draft proposed revisions have not been officially circulated for agency or public comment. No rationale has been presented with this draft proposal.

Question 10. Has the Department of Veterans' Benefits developed a plan for future A-76 studies?

If so, please tell us what you are considering in the future.

Answer. The Department of Veterans Benefits' is presently considering performing 69 cost comparison studies with the following functional area breakdown:

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[1] See p. 81.
[2] See p. 82.

	Station
Centralized transcription activities	53
Microfilming	4
Keypunch	9
Automated mail inserting	3
Total studies	69

There is a possibility, however, that the latter three functions may not require cost comparison studies due to changes in equipment configuration. In addition, some of the three functions at certain locations are so small that they could be converted to contract without adversely affecting any VA employees.

Question 11. What activities within the Department of Veterans' Benefits were ordered to conduct cost comparison studies? What are the results to those studies?

Answer. The Department of Veterans' Benefits is presently proceeding with cost comparison studies at seven field stations with the following breakdown:

Field station and functional activity

Albuquerque, N. Mex.—Centralized transcription.
Houston, Tex.—Centralized transcription.
Manchester, N.H.—Centralized transcription.
Reno, Nev.—Centralized transcription.
Seattle, Wash.—Centralized transcription.
Togus, Maine—Centralized transcription.
White River Junction, Vt.—Keypunch.

Each of the indicated stations has been placed on the same time frame for completion of their study. Bid openings are to occur on June 23, 1982.

No results are presently available. In accordance with the format expressed in A-76 the results will not be available until late July 1982.

ANSWERS TO QUESTIONS SUBMITTED TO THE VETERANS' ADMINISTRATION BY HON. ELWOOD HILLIS

Question 1. If the new draft of Circular A-76 were to become finalized, what would be the effect on VA's new ADP procedures?

Would you have to contract these procedures out?

Answer. Currently the provisions of Public Law 97-66 would exempt the ADP decentralization to DM&S from A-76 cost comparison consideration. If the new draft proposal were in effect, much of the decentralized ADP operations which were amenable to contracting would be contracted out without a study.

Question 2. It occurs to me that transcription of doctor's notes for purposes of complete medical records is so inherently a governmental function and so inherently a part of medical care that it would be most difficult to contract it out.

Do you agree?

Answer. Medical transcription services are performed by contract in many private hospitals. We currently have contracts at several medical centers in order to augment our current transcription units. We have not defined medical transcription service as either direct medical care or a government function. If we do perform an A-76 cost comparison study the solicitation will include a precise statement of work with strong quality assurance provisions. Consequently, if medical transcription were to be contracted out the same level of efficiency and accuracy would be expected.

Question 3. If you contracted out installation and maintenance of equipment, would you still have to have standby employees for emergencies?

Answer. We have considered the possibility of retaining a core of personnel for emergency maintenance of equipment in the event we were to proceed with an A-76 cost comparison study at a medical center. If we do eventually perform cost comparisons on medical center real property maintenance, we will again consider the need for standby maintenance. We have temporarily exempted one cemetery in each of the 10 Federal regions from cost comparison consideration to ensure back-up capability in the event of conversion to contract for maintenance at satellite cemeteries.

Question 4. If the new draft procedures were implemented, would you have to close existing laundries with more than 25 employees if cost comparison so indicated?

Answer. The cost comparison of laundries could be considered in two alternatives for laundries employing more than 25 employees: Contractor Owned Contractor Operated (COCO) or Government Owned Contractor Operated (GOCO). If contract con-

sideration was of the former method (COCO), which is generally the preferred method of procurement, contracting out would result in the closing of the existing laundry. If the cost comparison was of the GOCO option, contracting out would mean the existing facility would be operated by the contractor's personnel.

Question 5. I note that one of the functions that could be contracted out under the proposed procedure would be motor vehicle operation.

Does this include activities within a cemetery and does it include ambulance service at hospitals?

Answer. The motor vehicle operation function is not currently on the review schedule for the Department of Memorial Affairs. However, it motor vehicle operation is a separable function susceptible to contracting, it would be converted to contract under the proposed revisions. Ambulance service likewise would be considered appropriate for contracting under either the current A-76 provisions or the proposed revisions to A-76. In fact, we already rely upon contract ambulance service at many of our medical centers.

LIST OF VA COMMERCIAL ACTIVITIES WITH LESS THAN 26 FTE

Activity title	Number of VAMC's reporting function	Total FTE
ADP analysis (Feasibility, Consultations, Systems Analysis, Design Development, and so forth)	21	21
Keypunching	143	319
Programing (software)	11	14
Data entry (other than keypunching)	10	14
Installation and maintenance of ADP equipment	12	23
Automatic transport system maintenance	11	15
Elevator inspections and repair	32	29
HVAC filter replacement	90	85
Duct and fin tube cleaning	30	32
Maintenance of grounds	142	603
Replacement or constrution of new roads, sidewalks, curbs, and so forth	20	26
Snow removal	78	122
Exterior painting and waterproofing	53	92
Masonry/structural repair	48	179
Roof inspection and repair	41	28
Design services, A/E and drafting	105	259
Inspection and testing of firefighting equipment	79	80
Firefighting	31	344
Electronics and communications equipment repair	82	133
Food service equipment repair	121	149
Medical and dental equipment repair	139	532
Laundry equipment repair	75	89
Furniture repair	48	52
Pest control	65	60
Laundry and drycleaning	78	1,138
Carpet cleaning	67	106
Window washing	35	42
Interior design	54	43
Word processing (transcripton pools)	118	758
Motor vehicle operation	115	574
Water and sewerage treatment	26	48
Boiler plant inspection	10	7
Steam generation	131	806
Refuse collection and disposal	133	129
Chilled water production	65	209
Total		7,160

VETERANS' ADMINISTRATION'S DEFINITION OF DIRECT AND INDIRECT MEDICAL CARE IN ACCORDANCE WITH OMB CIRCULAR A-76

OMB Circular Number A-76, "Policies for Acquiring Commercial or Industrial Products and Services Needed by the Government," at paragraph 6(b) allows:

The implementation provisions of this Circular do not apply to *government functions* as defined in paragraph 5(f). These functions must be performed in-house by Government personnel. (emphasis added)

Paragraph 5(f) of the OMB Circular defines "Governmental function" as ". . . a function which must be performed in-house due to a special relationship in executing governmental responsibilities . . ." the General Counsel considered these ground rules in his March 21, 1980 opinion to the chief Medical Director on the applicability of OMB Circular No. A-76 to the functions of the Department of Medicine and Surgery. In the summary paragraph of that opinion, he informed:

. . . (W)e believe differing policies are operative in OMB Circular A-76, and the management of DM&S. The general policy that the Government not compete with the private sector for commercial or industrial products and services underlies A-76. A national policy to provide, as a *governmental function,* a complete medical and hospital service for our Nation's veterans underlies Title 38 and DM&S operations. To apply the rules of A-76 to the basic medical care operations of DM&S, where specific statutes establish the parameters of the mandated *governmental function,* canot be justified either legally or on a policy basis . . . (emphasis added)

It has properly fallen to the Chief Medical Director as the responsible VA official to define the general term "complete medical and hospital service," in order to apply the A-76 policy to the non-governmental, commercial-industrial functions of the Department of Medicine and Surgery. The Committee requested the Agency furnish, for the record, a definition of "VA direct medical care activities." The Deputy General Counsel advised the Committee this definition is within the sole authority of the Chief Medical Director to determine. By this device, the Chief Medical Director is making such a determination, which follows.

Complete medical and hospital service initiates with management; thus, all medical center and clinic positions classified as executive, managerial, and supervisory, including their administrative support, constitute a governmental function. All the functions and personnel normally aligned under the Patient Care Services component are governmental. These include, in addition to Medicine, Surgery, and Psychiatry, the professional specialties of Neurology, Nuclear Medicine, Laboratory, Radiology, Rehabilitation Medicine, Dentistry, Nursing, Psychology and Chaplaincy. The Allied Health Services are also governmental functions, since they collectively contribute to direct health care delivery, and thus comprise a vital extension of medical care. They are Dietetics (including food service), Pharmacy, Social Work, Library, Voluntary, Audiology and Speech Pathology, Prosthetic and Sensory Aids, and Medical Media Production Services. All personnel working in these enterprises are furnishing a governmental function.

Among the Administrative Services component, Fiscal and Personnel Services provide a governmental function. The former is the principal controller of government funds (including budgeting, accounting, and expending functions) and the latter supports the institution's comprehensive personnel administration program (including representing the government in its labor relations, classifying government employee positions, and administering the government's payroll). These functions contribute directly to the delivery of patient care, since their operations directly concern the resources and staff whose work results in the delivery of care.

The remaining administrative services cannot, in their entirety, be included within the term "complete medical and hospital service." The excluded functions—those which are commercial-industrial in nature and which must be scrutinized under OMB Circular No. A-76—are identified as follows:

Under Engineering Service—Plant Maintenance: Plumbing/steamfitting; carpentry; electrical; masonry; painting; air conditioning/refrigeration; grounds and general labor.

Elevator inspection; architect-engineering, design, and drafting; motor vehicle maintenance; and furniture repair.

Under Medical Administration Service—Reproduction/duplication; medical transcription; keypunching; and microfilming.

Under Building Management Service—Pest controlling; refuse collection; window washing; carpet cleaning; interior design; and laundry.

The functions identified above clearly meet OMB's definition of "commercial-industrial products and services." They are separable from other functions of the Department and are generally available from private enterprise. The Chief Medical Di-

rector is, however, ill at ease in including the laundry function among these items for A-76 cost review. VA experience with commercial laundries, as recently as in 1980, makes the Agency very apprehensive over both price and quality of commercial services. Also, the Department is proud of its accomplishments in VA laundry consolidations, which have produced substantial government cost avoidance in recent years. Finally, although one might surmise that laundry service does not substantively impact quality of care, a recent furor over the "cold water wash" initiative vividly demonstrates the continuing concerns of DM&S professional components. In that instance, our overriding worry related to the potential increased incidence of microbial infection related to lowered wash temperature. The cold water wash initiative has been see aside for scientific inquiry on the basic of this professional concern. Nevertheless, a well written statement of work should provide sufficient protection for quality laundry service in the event that conversions to contract are more economical to the government.

COST CONTAINMENT IN DM&S DIETETIC SERVICES

FEBRUARY 12, 1982.

[Veterans Administration Memorandum]

To: ACMD for professional services.
Subject: Cost containment.

1. VACO Dietetic Service has conducted two Cost Containment conferences, one in September, 1980 and the other in June, 1981. From September, 1980 through January, 1982, the following savings have been realized at the 70 facilities which participated in these conferences.

FTE returned to management	$226
Dollars attached to FTE returned to management	3,527,091
Dollars saved through reclassification	396,398
Total	3,923,489

2. A breakdown by Regions is attached.
3. Further savings in released space and excessed equipment were also realized.

ELEANOR M. MOREY, R.D.,
Director, Dietetic Service (120).

Attachments.

DIETETIC SERVICE—COST CONTAINMENT, SEPTEMBER 1980 TO JANUARY 1982

VAMC's	Returned to management		Saved through reclassification
	FTE	Dollars	
Region 1:			
New York	17.0	$203,350	
Canandaigua	5.5	87,627	
Bedford	5.0	79,000	$3,000
Albany	2.5	45,733	21,659
Syracuse	1.0	27,000	7,344
Brockton			1,664
Montrose			26,539
West Haven			48,397
Manchester	2.0	28,350	
Newington			1,581
Castle Point			
Batavia			
Northport	12.0	220,000	
Total	45.0	691,060	110,184
Region 2:			
East Orange	5.5	73,533	
Mountain Home	9.0	135,988	
Salisbury	4.5	45,671	
Pittsburgh (HD)	1.0	17,800	30,000
Pittsburgh (UD)			

DIETETIC SERVICE—COST CONTAINMENT, SEPTEMBER 1980 TO JANUARY 1982—Continued

VAMC's	Returned to management		Saved through reclassification
	FTE	Dollars	
Durham	1.5	15,000	5,500
Altoona	1.0	25,000	
Lebanon			9,047
Ft. Howard			
Huntington			
Wilmington			1,264
Clarksburg			
Coatesville			
Martinsburg			
Salem	7.0	99,611	
Total	29.5	412,603	45,811
Region 3:			
Lexington	6.5	76,670	15,575
Tuscaloosa	3.0	39,624	12,252
Tuskegee	5.0	83,060	21,050
Biloxi	14.0	76,413	17,891
Murfreesboro	9.0	136,201	
Lake City	2.5	28,849	
Shreveport	1.0	10,998	
Little Rock			
Bay Pines			
Charleston			
Columbia, SC			2,113
Total	41.0	451,815	73,498
Region 4:			
Hines	23.0	442,607	2,705
Marion, IN	12.0	226,270	44,964
Danville	11.0	202,717	
North Chicago	18.0	259,736	13,800
Cleveland	5.0	110,510	
Dayton	4.0	97,480	
Chillicothe	6.0	92,423	
Cincinnati	2.5	45,458	
Chicago, LS	2.0	47,590	
Indianapolis	3.0	43,276	14,654
St. Louis	1.0	31,527	
Madison	1.0	33,494	8,020
Marion, IL	.5	637	
Saginaw			10,600
Tomah			
Total	89.0	1,633,725	94,743
Region 5:			
Des Moines	3.0	66,067	
Leavenworth	7.0	77,973	26,371
Lincoln	1.0	12,168	
Omaha			1,649
Kerrville	1.0	22,069	
Wichita	1.0	13,478	
Muskogee	3.0	34,622	
Minneapolis	2.0	33,599	
Ft. Lyon	1.5	32,682	
Dallas	1.0	19,600	
Ft. Meade			

DIETETIC SERVICE—COST CONTAINMENT, SEPTEMBER 1980 TO JANUARY 1982—Continued

VAMC's	Returned to management		Saved through reclassification
	FTE	Dollars	
St. Cloud			21,000
Sioux Falls			870
Total	20.5	312,258	49,890
Region 6:			
Big Spring			
Loma Linda	1.0	25,630	16,393
Boise			5,879
Total	1.0	25,630	22,272